Chapter XXI
Religious and Charitable Endowments

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CHAPTER XXI

RELIGIOUS AND CHARITABLE ENDOWMENTS

SYNOPSIS

§ 401. Endowments.—A Hindu who is of sound mind, and not a minor, may dispose of his property by gift or by will for religious and charitable purposes, such as the establishment and worship of an idol,[1] feeding *Brahmans* and the poor,[2] performance of religious ceremonies like *shraddha*, *Durga puja* and *Lakshmi puja*,[3] and the endowments of a university[4] or an hospital.[5] A list of what conduces to religious merit in Hindu law can be exhaustive. However, when any purpose is claimed to be a valid one for perpetual dedication on the ground of religious merit, though lacking in public benefit, it must be shown to have a Shastric basis.[6] The heads of religious purposes determined by belief in acquisition of religious merit cannot be allowed to be widely enlarged consistently with public policy and needs of modern society.[7]

When the question is whether the endowment is real or fictitious, the mode of dealing with it by its donors and successors is an important element for consideration.[8]

Doubt as to certain gifts.—The High Court of Calcutta has expressed a doubt as to whether gifts to *pundits* holding *tolls* for learning in the country at the time of *Durga puja*, or for the reading of the *Mahabharata* and *Poorana*, or for the prayer of God during certain months are valid.[9]

Superstitious uses not forbidden.—The English law relating to superstitious uses does not apply to Hindu religious endowments. Thus, a gift in favour of an idol or for the performance of the worship of a deity is valid according to the Hindu law, though, it may not be valid according to the English law.[10] Dispositions for religious purposes are highly favoured by Hindu law and the leaning of the courts also is in

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1 *Bhupati Nath v Ram Lal*, (1910) 37 Cal 128 : 3 IC 642; *Khusalchand v Mahadevgiri*, (1875) 12 Bom HC 214.
2 *Dwarkanath v Burroda*, (1878) 4 Cal 443; *Rajendra Lall v Raj Coomari*, (1907) 34 Cal 5; *Manorama v Kali Charan*, (1904) 31 Cal 166.
3 *Prafulla v Jagendra Nath*, (1905) 9 CWN 528; *Lakshmishankar v Vaijnath*, (1882) 6 Bom 24.
4 *Manorana v Kali Charan*, (1904) 31 Cal 166.
5 *Fanindra v Adm-Gen of Bengal*, (1901) 6 CWN 321.
6 Reference may be made to the decision of the Supreme Court in *Nagu Reddiar v Banu Reddiar*, AIR 1978 SC 1174.
7 *Saraswathi Ammal v Rajagopal Ammal*, (1954) 1 SCR 277, 287 : AIR 1953 SC 491.
8 *Chaturbhuj Singh v Sarada Charan Guha*, (1932) 11 Pat 701 : 141 IC 157 : AIR 1933 Pat 6.
9 *Dwarkanath v Burroda*, (1878) 4 Cal 443. However, see Re *Darling*, (1986) 1 Chapter 50.
10 *Juggut Mohini v Sokheemoney*, (1871) 14 MIA 289, pp 301–302; *Khusalchand v Mahadegiri*, (1875) 12 Bom HC 214.

the same direction. Dedication of property by a Hindu to a deity is not only lawful, but also commendable in a high degree from the Hindu point of view.[11]

Games or sports: Education.—In case of a trust created to set up an *akhara*, it cannot be said that there was a dedication for religious or charitable purpose, even though two idols and *taswir* were installed there to attract wrestlers of both the Hindu and the Muslim community. Distinction has been drawn between cases where the object of the dedication was the promotion of games and sports as part of education, and cases where the object was the promotion of games or sports simplicitor. The former only has been upheld on the ground that the object was to promote education.[12]

§ 401A. Endowments: Statutory provisions.—A number of statutes have been enacted by state legislatures in the last few years dealing with religious and charitable trusts and endowments. The validity of the provisions of a number of them has been challenged under various articles of the Constitution and courts have considered those provisions *inter alia* in the context of property of the trust or endowment, deities, idols, temples and institutions, as also the income and management of the property and affairs of the same, including the right to and management of the worship of certain deities and idols. It is not necessary in this chapter to refer to those decisions in any detail or to the Constitutional questions raised and it will suffice only to mention several of those decisions:

(1) *Commissioner, Hindu Religious Endowments, Madras v Sri Lakshmindra Thirtha Swamiar*[13]—Madras Hindu Religious and Charitable Endowments Act (19 of 1951).

(2) *Ratilal v State of Bombay*[14]—Bombay Public Trusts Act (29 of 1950).

(3) *Sri Jagannath v State of Orissa*[15]—Orissa Hindu Religious Endowments Act (4 of 1939).

(4) *Venkataramana Devaru v State of Mysore*[16]—Madras Temple Entry Authorisation Act (5 of 1947).

(5) *Moti Das v SP Sahi*[17]—Bihar Hindu Religious Trusts Act (1 of 1951).

(6) *State of Bihar v Charusila Dasi*[18]—Bihar Religious Trusts Act (1 of 1951).

(7) *State of Bihar v Bhabapritananda*[19]—Bihar Religious Trusts Act (1 of 1951).

(8) *Narayana v State of Andhra*[20]—Madras Hindu Religious and Charitable Endowments Act (19 of 1951) (extinction of *mahant*'s rights).

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11 *Bhupati Nath v Ramlal*, (1910) 37 Cal 128, pp 136–37, 141; 3 IC 642; *Ananthakrishnan v Chidambaran*, AIR 1953 Tr & Coch 442; *Brajabala v Sree Saradiya Durgamata*, (1953) 2 Cal 268, AIR 1953 Cal 285.

12 *Ramchandra v Shree Mahadoji*, AIR 1970 SC 458.

13 *Commissioner, Hindu Religious Endowments, Madras v Sri Lakshmindra Thirtha Swamiar*, AIR 1954 SC 282.

14 *Ratilal v State of Bombay*, AIR 1954 SC 388.

15 *Sri Jagannath v State of Orissa*, AIR 1954 SC 400.

16 *Venkataramana Devaru v State of Mysore*, AIR 1958 SC 255.

17 *Moti Das v SP Sahi*, AIR 1959 SC 942.

18 *State of Bihar v Charusila Dasi*, AIR 1959 SC 1002.

19 *State of Bihar v Bhabapritananda*, AIR 1959 SC 1073.

20 *Narayana v State of Andhra*, AIR 1959 AP 471.

(9) *Sadavarthy v Commr Hindu Religious and Charitable Endowments*[21]—Madras Hindu Religious Endowment Act (2 of 1927) (temple).

(10) *Sudhindra Thirtha Swamiar v Commr for Hindu Religious and Charitable Endowments*[22]—Madras Hindu Religious Endowments Act (19 of 1951 as amended by Act 27 of 1954) (Udipi *math* founded by Sri Madhavacharya).

(11) *Tilkayat Shri Govindlalji v State of Rajasthan*[23]—Rajasthan Nathwara Temple Act (13 of 1959).

(12) *KA Samajam v Commr of HR&C Endowments, Hyderabad.*[24]

§ 402. Gift to *dharam*, void.—A gift or bequest to *dharam* is void for vagueness and uncertainty; so also a bequest for good work.[25] The objects meant by that word are too vague and uncertain for the administration of them to be under the control of a court.[26]

The enactments indicated in § 401A, contains their own definitions and deal *inter alia* with public and charitable trusts as therein defined. As to the content and extent of the expression 'religion' and 'matters of religion', reference may be made to the decisions of the Supreme Court referred to in § 401A, and particularly to *Ratilal v State of Bombay* mentioned therein.

It is a maxim of equity that the execution of a trust shall be under the control of the court. The trust, therefore, must be of such a nature that it can be under that control. For that purpose, it is necessary that the subject and object of the trust must both be such as can be ascertained by the court. If the subject or object cannot be ascertained, the trust cannot be enforced by the court, and it is void.[27] In the case of a gift to *dharam*, the Judicial Committee observed in *Runchordas v Parvatibai*,[28] that the objects which can be considered to be meant by that word are vague and uncertain. In *Wilson's Dictionary*, the word '*dharam*' is defined to be law, virtue, legal or moral duty. Relying upon this definition of *dharam*, the Judicial Committee held that the word '*dharam*' was as vague as the words 'purposes charitable or philanthropic,' which, on account of their vagueness, render a trust for those purposes void in the English law.[29] Gifts for 'charitable or other purposes' or gifts expressed in other

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21 *Sadavarthy v Commr Hindu Religious and Charitable Endowments*, AIR 1963 SC 510.

22 *Sudhindra Thirtha Swamiar v Commr for Hindu Religious and Charitable Endowments*, AIR 1963 SC 510.

23 *Tilkayat Shri Govindlalji v State of Rajasthan*, AIR 1963 SC 1638.

24 *KA Samajam v Commr of HR&C Endowments, Hyderabad*, AIR 1971 SC 891.

25 *Gauri Shankar v Mohan Lal*, (1940) 15 Luck 674 : 187 IC 597 : AIR 1940 Ori 275; *Jairan v Bhagirathi*, (1949) ILR Nag 765 (subject-matter uncertain).

26 *Runchordas v Parvatibai*, (1899) 23 Bom 725 : 26 IA 71 affirming, (1897) 21 Bom 646.

27 *Morice v The Bishop of Durham*, (1804) 10 Ves 522 (objects of benevolence of liberality); Re *Riland*, (1881) WN [Eng] 173 (charitable or benevolent purposes); Re *Macduff*, (1896) 2 Chapter 451 (purposes, charitable or philanthropic); *Blair v Dunchan*, (1908) AC 37 (such charitable or public purposes as my trustee thinks proper); *Hunter v Att-Gen*, (1889) AC 309; *Grimond v Grimond*, (1905) AC 124. As to what are charitable objects, see the judgment of Lord Macnaughten in *Commrs of IT v Pemsel*, (1891) AC 531, p 583.

28 *Runchordas v Parvatibai*, (1899) 23 Bom 725 : 26 IA 71.

29 *Runchordas v Parvatibai*, (1899) 23 Bom 725 : 26 IA 71; *Parthasarathy v Thiruvengada*, (1907) 30 Mad 340 (*dharam*); *Gangabai v Thavar*, (1863) 1 Bom HC 71 (*dharam*); *Advocate-General v Damodhar*, (1852) Perry's Oriental Cases 526 (*dharam*); *Cursandas v Vundravandas*, (1890) 14 Bom 136 (*dharamada*); *Devshankar v Motiram*, (1894) 18 Bom 136 (*dharamada*); *Venkatanarasimha v Subba Rao*, (1923) 46 Mad 300 : 73 IC 991 : AIR 1923 Mad 376.

alternative terms are not charitable; for they may be executed without any part of the property being applied to charitable purposes.[30] Thus, a gift for 'charitable or benevolent purposes' is void.[31] Applying the above principles, it has been held that a trust for *sarakam* (good work),[32] a trust for 'purposes of popular usefulness or for purposes of charity as may be approved by the trustees',[33] a trust for spending money 'in proper and just acts for the testator's benefit',[34] and a trust for disposing of the residue 'in a righteous manner, in a pious and charitable way, as may appear advisable to all my three executors, and in such manner that people may speak well of me and that all my three heirs may acquire great fame',[35] are all void. Similarly, an ultimate residuary gift to any agnate, and failing agnates to any *Brahmin*, who would live in the testator's ancestral house, has been held to be void.[36] A direction to trustees to pay a certain sum of money at their discretion towards dispensaries, hospitals, charitable societies, schools or any students' association, feeding of the poor, etc., marriage, *upanayana*, etc., excavation and consecration of tanks, etc., or in the construction *ghats* or *math*, has also been held to be void.[37] Where the bequest is for *dharam*, *dharamshala* and Sanskrit education, the bequest for *dharam* being void, the entire bequest is void.[38] A gift for spreading of Hindu religion is void.[39]

However, a gift to be established at a definite place is valid.[40] A gift to 'such charities as the trustees may think deserving' is also valid;[41] and so a gift with power to trustees to give away the property 'in charity in such manner and to such religious and charitable purposes, as they may in their discretion think proper'.[42]

A gift 'for the performance of ceremonies and giving feasts to *Brahmans*' is not void for uncertainty.[43] Nor is a devise of property to executors upon trust to distribute the same among the testator's poor relations, dependants and servants.[44] There is a conflict of opinion whether a gift for the spread of Sanskrit language is void for uncertainty.[45]

When there is a bequest for feeding the poor—a bequest which is valid in law the fact that it is referred to in a later part of the same will as '*dharam*' does not make it invalid.[46]

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30 *Halsbury's Laws of England*, Volume IV, p 146, Article 230.

31 Re *Riland*, (1881) WN [Eng] 173; Re *Harbison* (1902) 1 IR 103; Re *Sidney* [1908] 1 Chapter 488.

32 *Bai Bapi v Jamnadas*, (1898) 22 Bom 774.

33 *Trikumdas v Haridas*, (1907) 31 Bom 583; *Jamnabai v Dharsey*, (1902) 4 Bom LR 893.

34 *Gokool Nath v Issur*, (1887) 14 Cal 222.

35 *Nanalal v Harlochand*, (1890) 14 Bom 476, p 479.

36 *Shyam Charan v Sarup Chandra*, (1912) 17 CWN 39 : 14 IC 708.

37 *Sarat Chandra v Pratap Chandra*, (1913) 40 Cal 232 : 21 IC 194.

38 *Brij Lal v Narain Das*, AIR 1933 Lah 833.

39 *Venkatanarasimha v Subba Rao*, (1923) 46 Mad 300 : 73 IC 991 : AIR 1923 Mad 376.

40 *Morarji v Nenbai*, (1893) 17 Bom 351.

41 *Smith v Massey*, (1906) 30 Bom 500; *Gordhan Das v Chunni Lal*, (1908) 30 All 111; *Surbomungola v Mohendronath*, (1879) 4 Cal 508.

42 *Parvati v Ram Barun*, (1904) 31 Cal 895.

43 *Lakshmishanker v Vaijnath*, (1882) 6 Bom 24; *Suryanarayanarao v Rajeshwari*, AIR 1966 AP 269.

44 *Manorama v Kali Charan*, (1904) 31 Cal 166.

45 *Venkatanarasimha v Subba Rao*, (1923) 46 Mad 300, pp 314–15 : 73 IC 991 : AIR 1923 Mad 376 (Spencer J), pp 325–45, (Devados J).

46 *Vaidyanatha v Swaminatha*, (924) 47 Mad 884 : 51 IA 282 : 82 IC 804 : AIR 1924 PC 221.

Samadhi.—An endowment of property for the purpose of a *samadhi kainkaryam*, i.e., worship at the *samadhi* (tomb) of a person is not valid.[47] The Supreme Court, in another case, pointed out that the above rule is subject to certain exceptions, such for instance, as the *samadhis* of saints.[48]

When the *Samadhi* in question was built from public funds and the public had a right to visit it on payment, the fact that the *Samadhi* was on private lands and a house was built subsequently, after the dedication, it could not be said that it did not partake the character of a public endowment.[49]

§ 403. Subject of endowment.—A Hindu may dedicate for religious and charitable objects all property which he can validly dispose of by gift or by will (§ 346 and § 367).

There is nothing to prevent a Hindu from dedicating the whole of his property for religious and charitable purposes.[50]

§ 404. Endowment how created.—(1) No writing is necessary to create an endowment,[51] except where the endowment is created by a will, in which case, the will must be in writing and attested by at least two witnesses, if the case is governed by section 57, Indian Succession Act, 1925 (§ 368).

A mere entry in the account of a firm of moneylenders showing that the firm is indebted to the temple, followed by crediting of interest, does not create an endowment.[52]

(2) A Hindu, who wishes to establish a religious or charitable institution, may, according to his law, express his purpose and endow it. A trust is not required for that purpose. All that is necessary is that the religious or charitable purposes should be clearly specified, and that the property intended for the endowment should be set apart for or dedicated to those purposes. Even in the case of a dedication to an idol, which cannot itself physically hold lands, it is not necessary, though it is usual, to vest the land in trustees. Nor is it necessary that there should be any express words of gift to the idol.[53] No religious ceremony such as *sankalp, samarpan, pranapratishta* or *kumbhabhishekam* etc.[54] is necessary and a clear and unequivocal manifestation of

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47 *Saraswathi Ammal v Rajagopal Ammal*, (1954) 1 SCR 277 : AIR 1953 SC 491; *Veluswami v Dandapani*, (1947) ILR Mad 47; *Ramanasaraman v Commr HR and CE*, AIR 1961 Mad 265 : (1960) Mad 922; *Ravanna K Karuppannan v VP Tirmalai*, AIR 1962 Mad 500 (*samadhi* and education of poor pupils); *G Murthanna v G Chinna Ankiah*, AIR 1975 All 97.

48 *Nagu Raddiar v Banu Reddiar*, AIR 1978 SC 1174 (settlement in favour of *matam* and *samadhi* attachment to it).

49 *Sri Gedela Satchidananda Murthy (D) by LRs. v Dy. Commissioner, Endowments Dept.*, A.P. AIR 2007 SC 1917 : (2007) 5 SCC 677 (Reference is invited to the decisions cited therein)

50 *Sir F MacNaghten's Considerations on Hindu Law*, p 385.

51 *Maddun Lal v Komul Bibee*, (1867) 8 WR 42; *Ramalinga v Sivachidambara*, (1919) 42 Mad 440 : 49 IC 472 : AIR 1919 Mad 809; *Pallayya v Ramavadhanulu*, (1903) 13 MLJ 364; *Gangi Reddi v Tammi Reddi*, (1927) 54 IA 136 : 50 Mad 421 : 101 IC 79 : AIR 1927 PC 80 on appeal from (1922) 45 Mad 281 : 70 IC 337 : AIR 1922 Mad 236; *RV Reddiar v Krishnaswamy*, AIR 1971 Mad 262.

52 *Sooniram Ramniranjendass v Alogu Nachyar Koli*, (1939) ILR Rang 59.

53 *Manohar v Lakhmiram*, (188) 12 Bom 247, p 263; *Bhuggobutty v Gooroo*, (1898) 25 Cal 112, p 127; *Prafulla v Jogendra Nath*, (1905) 9 CWN 528, p 534; *Venkatanarasimha v Subba Rao*, (1923) 46 Mad 300 : 73 IC 991 : AIR 1923 Mad 376; *SNP Nadar v TPT Charity*, AIR 1971 Mad 253 (dedication to a temple to be built for a deity).

54 *Pichai v Commr HR and CE*, AIR 1971 Mad 405.

intention to create a trust and vesting of the same in the donor or another as a trustee, is enough to constitute dedication.[55]

The Indian Trusts Act, 1882, section 1.—The Indian Trusts Act, 1882, does apply to public or private religious or charitable endowments.[56]

The Transfer of Property Act, 1882, section 123.—It has been held by the High Court of Madras that a dedication of land for a public temple is not a gift within the meaning of section 122, Transfer of Property Act, 1882. The provisions, therefore, of section 123 of the Act, which require a gift of land to be effected by registered instrument, do not apply to such a dedication.[57]

Revocation of endowment.—A valid endowment, once created, cannot be revoked by the donor.[58]

§ 404A. Illusory endowments.—(1) The mere execution of a deed, though it may purport on the face of it to dedicate property to an idol, is not enough to constitute a valid endowment; for the real object of the executant may be to defraud creditors, or to defeat the provisions of the ordinary law of descent, or to restrain alienations and keep the property in perpetuity in the family. It is necessary for the validity of a deed of endowment that the executant should divest himself of the property. Whether he had done so or not, is to be determined by his subsequent acts and conduct. Thus, if the profits of the property are appropriated by the executant to his own use, and not to the worship of the idol, and his subsequent dealings with the property show that he did not intend to create an endowment, the dedication will be inoperative, and the property cannot be treated as *debutter*, i.e. belonging to the idol. The property will still continue to be his, and it may be attached in execution of a decree against him.[59] Similarly, if a Hindu purchases property in the name of his idol, without setting up the idol for public worship and without appointing priests for its worship, the property does not become the property of the idol, but remains his own private property.[60]

However, when an endowment is created by a will and is to take effect on the death of the testator, then unless there is evidence to show that the testator gave directions during his lifetime contrary to the terms of the will, his mode of dealing with the endowed property is irrelevant for the purpose of determining the true nature of the endowment. The conduct of the manager, after the testator's death, even if it is

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55 For a brief statement on the subject, reference may be made to *Ramchandra v Shree Mahadeoji*, AIR 1970 SC 548; *Prem Nath v Hari Ram*, (1935) 16 Lah 85 : 154 IC 229 : AIR 1934 Lah 771; *Jai Dayal v Ram Saran Das*, (1938) Lah 704; *Deep Lal v Gulabchand*, AIR 1956 Raj 171; *Ram Ratan Lal v Kashinath*, AIR 1966 Pat 235; *Bipin v Rudranarayan*, AIR 1978 Ori 203.

56 *Gopu v Sami*, (1905) 28 Mad 517; *Narasimha v Venkatalingum*, (1927) 50 Mad 687 : 103 IC 302 : AIR 1927 Mad 636 (FB).

57 *Pallayya v Ramavadhanulau*, (1903) 13 MLJ 364; *Narasimha v Venkatalingum*, (1927) 50 Mad 687 : 103 IC 302 : AIR 1927 Mad 636 (FB).

58 *Dasami v Paran*, (1929) 51 All 621 : 116 IC 433 : AIR 1929 All 315.

59 *Watson & Co v Ramchand*, (1891) 18 Cal 10; *Kanwar Doorganath v Ram Chunder*, (1877) 2 Cal 341, p 349 : 4 IA 52; *Suppammal v Collector of Tanjore*, (1889) 12 Mad 387; *Ram Dhan v Prayag*, (1921) 43 All 503 : 62 IC 862 : AIR 1921 All 37; *Siri Thakur v Atkins*, (1919) 4 Pat LJ 533 : 53 IC 106; *Parmod Banabihari v Atkins*, AIR 1919 Pat 442; *Bhekdhari Singh v Sri Ramchanderji*, (1931) 10 Pat 388 : 136 IC 290 : AIR 1931 Pat 275; *Mahani Dasi v Pareshnath Thakur*, AIR 1954 Ori 198; *Sri Gopal Thakur v Pravasini*, AIR 1967 Ori 85; *Radha Gobinda v Kamala Devi*, AIR 1974 Cal 283; *Dharma Raja v Rama Ammal*, (1978) 1 Mad LT 492 (there must be real dedication, absolute or partial, mere execution of instrument is not enough).

60 *Brojosoondery v Luchmee*, (1873) 20 WR 95 (PC).

contrary to the terms of the will, cannot also be regarded as reflecting the intentions of the testator.[61]

(2) Where there is no real dedication of property for the worship of an idol, but only an attempt to create a perpetuity in favour of the settlor's descendants, the gift to the idol is void.[62] The mere fact, however, that the members of the settlor's family are nominated as *shebaits* or *mutawallis* to the temple and that they are to be remunerated out of the income of the property, is no ground for holding that the dedication is not real, provided the remuneration is reasonable having regard to the income of the property.[63]

§ 405. Complete dedication—Absolute grant in favour of charity.—A dedication of property to religious or charitable uses may be complete, or it may be partial. If the dedication is complete, a trust in favour of public religious charity is created. If the dedication is partial, a trust in favour of the charity is not created, but a charge in favour of the charity is attached to, and follows the property which retains its original private and secular character.[64] The question whether it is complete or partial depends on the construction of the instrument of grant as a whole.[65] Dedication to charity need not necessarily be by instrument or grant. It can be established by cogent and satisfactory evidence of conduct of the parties and user of the property which show the extinction of the private secular character of the property and its complete dedication of charity.[66]

Where the dedication was not nominal, and the property was purchased by the *Shebait* for the deity, it could not be said that it was not property of the idol or *debuttar* property.[67]

When there was no formal dedication of a bathing *ghat* and the plaintiff (or his predecessors) acted as owners and not as *shebaits* in effecting repairs and levying tolls, it was held that the plaintiff is the owner and that there was no dedication.[68]

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61 *Siva Kanta v Rajaniram*, AIR 1950 Assam 154.

62 *Promotho v Radhika*, (1875) 14 Bom LR 175; *Sri Thakurji v Sukhdeo Singh*, (1920) 42 All 395 : 58 IC 583 : AIR 1920 All 63 (FB).

63 *Jadu Nathu Singh v Thakur Sita Ramji*, (1917) 44 IA 187 : 39 All 553 : 42 IC 225 : AIR 1917 PC 177; *Chandi Charan v Dulal Chandra*, (1927) 54 Cal 30 : 98 IC 684 : AIR 1926 Cal 1083; *Ishwari Bhuvaneshwari Thakurani v Projonath Dey*, (1937) 64 IA 203 : (1937) 2 Cal 447 39 : Bom LR 933 : 168 IC 765 : AIR 1937 PC 185; *MA Ramanujacharyulu v M Venkatanarasimhachanryulu*, AIR 1974 AP 316.

64 *Dasaratharami v D Subb Rao*, AIR 1957 SC 797 : (1957) 1 SCR 1122; *Shanmugam Pillai v K. Sanmugam Pillai*, AIR 1972 SC 2069; *Gouri Shankar v Thakur Dass*, AIR 1972 J&K 53 (property dedicated descendible to heirs).

65 *Pande Har Narain v Surja Kanwari*, (1921) 48 IA 143 : 43 All 291 : 63 IC 34 : AIR 1921 PC 20; *Nirala Bala v Balai Chand*, AIR 1965 SC 1874; *Lakshminarasimhachari v Agastheswaraswamivaru*, AIR 1960 SC 622; *Iswar Dashabhuja v Kanchanala*, AIR 1977 Cal 473; *Bhekdhari Singh v Sri Ramchanderji*, (1931) 10 Pat 388 : 136 IC 290 : AIR 1931 Pat 275; *Ananthakrishnan v Chidambaram*, AIR 1953 Tr & Coch 442. The above statement of law was examined in *Kamalnarayan v R Kishorelal*, AIR 1958 MP 246, p 252; *Panchanan Dalai v Lakshmidhar*, AIR 1958 Ori 65; *Nirmala Bala v Balai Chand*, (1959) 64 CWN 546; *Narasi v Balamma*, AIR 1963 AP 130; *Sri Thakur Krishna v Kanhaylal*, AIR 1961 All 206; *Ram Ratan Lal v Kashinath*, AIR 1966 AP 235; *Vadivelu Mudaliar v NS Rajabada Mudaliar*, AIR 1937 Mad 175 (benefit meant essentially to charity).

66 *Dasaratharami v D Subbha Rao*, AIR 1957 SC 797.

67 *Sitaram Agarwal v Subrata Chandra*, 2008 AIR SCW 3499.

68 *Maharani Hemanta Kumari v Gauri Shankar Tewari*, (1941) All 401 : 193 IC 882 : 68 IA 53 : AIR 1941 PC 38.

Where the whole property is dedicated absolutely to the worship of an idol, and no beneficial interest in it is given to any person, the dedication is said to be absolute and complete. In such a case, the property is held by the idol, though it is only in an ideal sense that, property is so held, and it cannot be alienated except in the cases mentioned in § 412.[69]

In *Ramkishorelal v Kamalnarayan*,[70] the Supreme Court had to construe an award embodying partition among members of a joint family. Under the award, a village was given to a co-sharer *R kul huq haquq samet milkiyat* and then followed mention of the purposes (meeting expenses of worship and maintenance of a public temple) for which the village was being given to *R*. It was held on a consideration of the instrument as a whole that the intention was not to make *R* the absolute owner of the village, but to give him possession and management of the village for the benefit of the deity Shri Ramchandra Swamy.

However, mere use of the word '*debutter*' or *vishnuprit* or *sheoprit* may not suffice to constitute dedication.[71]

§ 405A. Partial dedication—charge in favour of charity.—Where by the grant, a mere charge or trust is created in favour of an idol, the dedication is said to be partial or qualified. In such a case, the property descends, and is alienable and partible, in the ordinary way; but subject always to the trust or charge in favour of the idol.[72] Where the surplus income, after the expenses of worship and ceremony were met, was to be invested in houses, for the residence of the settlor's descendants, it was held that there was no complete dedication.[73]

In determining whether the will of a Hindu gives the estate to an idol subject to a charge in favour of the heir of the testator, or makes the gift to the idol a charge upon the estate, there is no fixed rule depending on the use of particular terms in the will; the question depends on the construction of the will as a whole. A will provided that the property of the testator 'shall be considered to be the property of' a certain idol, and further provisions such as that the residue after defraying the expenses of the temples 'shall be used by our legal heirs to meet their own expenses'. The circumstances such as that, in respect of the ceremonies to be performed, the expenditure was fixed by the will and would absorb only a small proportion of the total income,

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69 *Jagadindra Nath v Hemanta*, (1905) 32 Cal 129 : 31 IA 203; *Jadu Singh v Thakur Sita Ramji*, (1917) 44 IA 187 : 39 All 533 : 42 IC 225 : AIR 1917 PC 177; *Shri Ganesh v Keshavrao*, (1891) 15 Bom 625; *Rajendra v Sham Chund*, (1881) 6 Cal 106; *Bhuggobutty v Goorroo*, (1898) 25 Cal 112; *Sathinama v Saravanabagi*, (1895) 18 Mad 266; *Chandi Charan v Daulat Chandra*, (1927) 54 Cal 30 : 98 IC 684 : AIR 1926 Cal 1083.

70 *Ramkishorelal v Kamalnarayan*, AIR 1963 SC 890.

71 *Sunderlal v Jogeshwar*, AIR 1975 Pat 246 (case law).

72 *Jagadindra Nath v Hemanta*, (1905) 32 Cal 19; 31 IA 203; *Sonatun v Jugutsoondree*, (1859) 8 MIA 66; *Ram Coomar v Jogender Nath*, (1879) 4 Cal 56; *Ashutosh v Doorga Churn*, (1880) 5 Cal 438 : 6 IA 182; *Kulada Prosad v Kali Das*, (1915) 42 Cal 536 : 24 IC 899 : AIR 1914 Cal 813; *Mahim Chandra v Hara Kumari*, (1915) 42 Cal 459 : 30 IC 798 : AIR 1915 Cal 487; *Gopal Lal Sett v Purna Chandra Basak*, (1922) 49 IA 100 : 49 Cal 459 : 67 IC 561 : AIR 1922 PC 253; *Pande Har Narain v Surja Kanwari*, (1921) 48 IA 143 : 43 All 291 : 63 IC 34 : AIR 1921 PC 20; *Bhekdhari Singh v Sri Ramchanderji*, (1931) 10 Pat 388 : 136 IC 290 : AIR 1931 Pat 275; *Parshadi Lal v Brij Mohan Lal*, (1936) 11 Luck, 575 : 159 IC 117 : AIR 1936 Ori 52; *Gouri Shankar v Thakur Dass*, AIR 1972 J&K 53.

73 *Surendrakrishna Ray v Shree Shree Ishwar Bhubanshwari Thakurani*, (1933) 60 Cal 54 : 144 IC 792 : AIR 1933 Cal 295; *Ishwari Bhuvnshawri Thakurani v Projonath Dey*, 64 IA 203, (1937) 2 Cal 447 : 39 Bom LR 933 : 168 IC 765 : AIR 1937 PC 185; *Gauri Shankar v Thakur Dass*, AIR 1972 J&K 53. Also see cases under § 408.

may indicate that the intention was that the heirs should take the property, subject to a charge for the performance of the religious purposes named.[74]

Similar would be the position, where it appears from the nature and situation of the properties and the directions given for their development, that it must have been contemplated that the income derived from them would be a growing one and must exceed the expenditure required for the prescribed ceremonies and charities.[75]

The question has to be determined by a conspectus of the entire provisions of the deed or will, by which the properties are dedicated. A provision giving a right to the *shebaits* to reside in the properties dedicated to the idol for the purpose of carrying on the daily and periodical worship and festivals does not detract from the absolute character of a dedication to the idol.[76] Reference may also be made to the undermentioned decision.[77]

§ 406. Application of profits of property—evidence of dedication.—(1) Where there is no instrument of grant, the mere fact that the profits of any land are being used for the support of an idol, is not proof that the land formed an endowment for the purpose; but where there is apparently good evidence going back for a long period, e.g., for more than half a century, that the land was given for the support of an idol, proof that from the time the profits had been so expended would be strong corroboration.[78]

The fact that the deceased *karta* of a joint Hindu family regularly paid the expenses of a charitable institution out of the profits of a family property, those expenses, however, not exhausting the whole of those profits, does not establish a dedication of the property to the charity.[79] In this case, the Judicial Committee while reversing the decree passed by both the subordinate judge and the High Court, observed that the subordinate judge had failed to notice the distinction between meeting of the expenses of a charity out of a particular property, and applying all the receipts of that property to the charity.

(2) Though the mere fact of the profits of any land being used for the support of an idol, may not be proof that the land formed an endowment for the purpose, yet it is a fact that might well be taken into consideration in cases where the intention of the founder is to be gathered from an ancient document expressed in ambiguous language.[80] In the construction, again, of such of a document, evidence is admissible as to the manner in which the property has been possessed and used.[81]

§ 407. Bequest to idol not in existence at testator's death.—The principle of Hindu law, which invalidates a bequest other than to a person in existence at the

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74 *Pande Har Narain v Surja Kanwari*, (1921) 48 IA 143 : 43 All 291 : 63 IC 34; *Parshadi Lal v Brij Mohan Lal*, (1936) 11 Luck 575 : 159 IC 117 : AIR 1936 Ori 52. Reference may also be made to *Ram Ratan Lal v Kashinath*, AIR 1966 Pat 235.

75 *Jadugopal v Pannalal*, AIR 1978 SC 1329; *Iswari Bhoobaneshwari v Brojo Nath*, AIR 1937 PC 185.

76 *Sree Sree Ishwar v Sushila Bala*, AIR 1954 SC 69 : (1954) 1 SCR 407. Also see cases under § 408.

77 *CIT, West Bengal v Jagannath Jew*, AIR 1977 SC 1523.

78 *Muddun Lal v Sreemutty Komul Bibee*, (1867) 8 WR 42, p 44; *Konwar Doorganath v Ram Chunder*, (1877) 2 Cal 341, p 349 : 4 IA 42.

79 *Gangi Reddi v Tammi Reddi*, (1927) 54 IA 136 : 50 Mad 421 : 101 IC 79 : AIR 1927 PC 80 reversing on this point same case in, (1922) 45 Mad 281 : 70 IC 337 : AIR 1922 Mad 236.

80 *Abhiran v Shyama Charan*, (1909) 36 Cal 1003, p 1012: 36 IA 148 : 4 IC 449.

81 *Kulada Prosad v Kali Das*, (1915) 42 Cal 536, pp 543–44 : 24 IC 899 : AIR 1914 Cal 813.

death of the testator (§ 371), does not apply to a bequest to trustees for the establishment of the image of a deity after the death of the testator. Such a gift is valid, though the image is to be established and consecrated after the testator's death.[82] Similarly, a dedication of immovable property by means of an *arpannama* to a number of deities, some of which were installed at the date of the disposition, are valid.[83]

Illustration

A bequeaths his property to his executors upon trust to establish after his death, an image of the goddess Kali in the name of his mother, and to devote the income of the balance to the worship of the goddess. The bequest is valid, though the image is to be installed for the first time after the testator's death (see §§ 358–359 and §§ 375–377)

Dedication to a temple.—Dedication to a temple, which has yet to be built for a deity as indicated in a deed of trust and for services to be performed in the temple, is valid.[84]

The idol must be specified.—The dedication must be to a particular deity. A dedication to '*the Thakurji in my thakurdwara,*' without mentioning the particular *Thakurji* to whom the bequest is to be given, is void for uncertainty.[85] In a Madras case, however, opinion has been expressed that a gift for worship of God without mentioning any particular deity is valid.[86]

Mutilation of idol.—The destruction or mutilation of the image does not effect the endowment. A new image may be established, and the endowment kept up.[87] The actual installation of an idol in a temple or the construction of a temple for the purpose is not necessary for validating a settlement in favour of that idol.[88]

§ 408. Endowments and rule against perpetuities.—(1) A dedication of property for a public, religious or charitable purpose is not invalid because it transgresses the rule which forbids the creation of perpetuities. The rule against perpetuity applies to gifts and bequests in favour of private individuals (§ 384). It does not apply to religious and charitable endowments.[89]

(2) Where the estate created by a grant is in its nature, secular, the mere fact that the motive for the grant was religious, does not constitute it a religious endowment, so as to exempt it from the rule against perpetuities.[90]

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82 *Bhupati Nath v Ram Lal*, (1910) 37 Cal 128 : 3 IC 642; *Mohar Singh v Het Singh*, (1910) 32 All 337 : 5 IC 584; *Chatarabhuj v Chatarjit*, (1911) 33 All 253 : 8 IC 832.

83 *Bhoopati Nath Chakrabarti v Vasantkumari Debee*, (1936) 63 Cal 1098 : AIR 1936 Cal 556.

84 *Pachamuthu Nadar v TPT Charities*, AIR 1971 Mad 253.

85 *Phundan Lal v Arya Prithi*, (1911) 33 All 793 : 11 IC 260; *Chandi Charan v Haribola*, (1919) 46 Cal 951 : 51 IC 275 : AIR 1919 Cal 199.

86 *Veluswami v Dandapani*, (1947) Mad 47.

87 *Bijoychand v Kalipada*, (1914) 41 Cal 57 : 20 IC 78 : AIR 1914 Cal 200; *V Raghavachari v Narayana*, AIR 1974 Mad 166; *Raghavachari v Narayana*, AIR 1973 Mad 323 (renovation of old temple, existence of *moolavar* deity).

88 *Sarad Sukh v Ram Prasad*, (1924) 46 All 130, p 135 : 78 IC 1018 : AIR 1924 All 357.

89 Transfer of Property Act, 1882, section 18; Indian Succession Act, 1925, section 118; *Bhuggobutty v Gooroo*, (1898) 25 Cal 112; *Prafulla v Jogendra Nath*, (1905) 9 CWN 528.

90 *Anantha v Nagamuthu*, (1882) 4 Mad 200. Reference may also be made to *M Kesava Gounder v DC Rajan*, AIR 1976 Mad 102 (statue of father).

Illustration

A, actuated by religious motives, makes a gift of certain property to *B* and *C*, both Brahmans, subject to the condition that they should not alienate the property and that it should be enjoyed by them and their heirs for ever. The restrain against alienation is void, and *B* and *C* take the property absolutely.

§ 408A. Endowments and directions for accumulations.—The rule stated in § 396 as to directions for accumulations, does not apply to religious endowments.

See section 18, Transfer of Property Act, 1882.

§ 409. Estate in remainder.—An endowment in not invalid because it is to take effect after the determination of an estate for life.[91]

Illustration

A executes a deed by which he reserves to himself a life-estate in certain property and directs that after his death, the income of the property shall be paid to his daughter for life and after her death, it shall be devoted to a certain temple. The endowment is valid, though it is to take effect after the determination of the life-estate in favour of the settler and his daughter.

§ 410. *Devasthanam, Math, Shebait, Mahant, Debutter* property.—Where property is devoted absolutely to religious purposes, in other words, where the dedication is absolute and complete, the possession and management of the property belongs in the case of a *devasthanam* or temple, to the manager of the temple, called *shebait*; but a *shebait* is not a mere *pujari* or *archak* of the temple. He is a human ministrant of the deity, until a *pujari* is appointed by the founder or the *shebait* to conduct worship. The *pujari* is thus a servant of the *shebait*.[92] In case of a *math*, that is an abode for students of religion, the possession and management of the property belongs to the head of the *math* called *mahant*; and this carries with it the right to bring whatever suit are necessary for the protection of the property. Every such right of suit is vested in the case of temple property in the *shebait* and, not in the idol, and in the case of *math* property in the *mahant*.[93] *Math* means a place for the residence of ascetics, their pupils, and the like. Since the time of the *Sankaracharya*, who established Hindu *maths*, these *maths* developed into institutions devoted to the teaching of different systems of Hindu religious philosophy, presided over by ascetics, who were held in great reverence, and religious preceptors and princes and noblemen endowed these institutions with large grants of property. In *Krishna Singh v Mathura Ahir*, the Supreme Court has fully and critically examined the subject.[94] Reference may also be made to *Hari Bhanu Maharaj v Charity Commissioners*, decided by the Supreme Court as to factors to be considered in determining whether a *math* is private or public.[95]

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91 *Gobind v Gomu*, (1908) 30 All 288.

92 *Kalimata Thakurani v Jibandhan*, AIR 1962 SC 1329.

93 *Jagadindra Nath Roy v Hemanta Kumari Devi*, (1905) 32 Cal 129 : 31 IA 203; *Badajirao v Laxmandas*, (1904) 28 Bom 215; *Bidhu v Kuladaprasad*, (1919) 46 Cal 877 : 50 IC 525 : AIR 1919 Cal 245; *Jodhi Rai v Basdeo Prasad*, (1911) 33 All 785 : 11 IC 47 (FB); *Govinda Ramanuj Das Mohanta v Mohanta Ramcharan Ramanuj Das*, (1936) 63 Cal 326.

94 *Krishna Singh v Mathura Ahir*, AIR 1980 SC 707 (caselaw examined). It may also be noticed that a number of *maths* have been established in the South by *Sudra* ascetics.

95 *Hari Bhanu Maharaj v Charity Commrs*, (1986) 4 SCC 162.

For position of *shebait* and *mahant*, see § 413. Property dedicated to religious uses is called *debutter* property. *Debutter* means literally 'belonging to a deity'.

Succeeding *shebaits* of a temple and *mahants* of a *math* form a continuous representation of the property of the idol or of the *math*.[96]

Distinction between temples and maths.—The religious foundations known as *devasthanams* or temples, are the most numerous in India and have the largest endowments, especially in the shape of lands, assignment of public revenue, and jewellery. These institutions have been established for the spiritual benefit of the Hindu community in general, or for that of particular sects or sections thereof. Next to the temples, the most important religious foundations in this country are the ancient *maths* or monasteries presided over, almost invariably, by *sanyasis* or monks. The object of these *maths* (or *mutts*) is generally the promotion of religious knowledge, and the imparting of spiritual instruction to the disciples and followers of the *math*. In the case of *maths*, though there are idols connected therewith, the worship of them is a secondary matter. The two classes of institutions, namely, temples and *maths*, are thus supplementary to each other in the Hindu ecclesiastical system, both conducive to spiritual welfare, the one by affording opportunities for prayer and worship, the other by facilitating spiritual instruction and the acquisition of religious knowledge. In the case of temples, the endowed property vests in the idol; in the case of *maths*, it vests in the *math* itself as a juristic person.[97] The *mahant* like the *shebait*, is the manager or custodian of the institution. The view taken in *Vidyapurna v Vidyanidhi*,[98] that in case of *maths* the ideal person is the office of the spiritual teacher which, as it were, is incarnate in the person of each successive *mahant* who, for the time, is the real owner is not tenable after the pronouncement of the Judicial Committee in *Vidya Varuthi v Balusami*.[99] The actual decision in *Vidyapurna v Vidyanidhi*,[100] is, however, correct, for it was held there that the *mahant* of an institution does not forfeit his office by reason of subsequent lunacy. So long as the duties of a *mahant* or *shebait* can be discharged by an agent or guardian, subsequent lunacy would not occasion a forfeiture of rights or furnish any grounds of removal.[101]

Arya samajist.—An *Arya Samajist*, who is a Hindu, can be a *shebait*, but the rites of the deity must be performed by a proper qualified person.[102]

Gurdwara.—A gurdwara is a juristic person and can hold property.[103]

Property held by an idol.—It is only in an ideal sense that property can be said to belong to an idol; and the possession and management of it must in the nature of things be entrusted to some person as *shebait*, or manager.[104]

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96 *Gulabhai v Sohangdasji*, (1928) 52 Bom 431 : 110 IC 263 : AIR 1928 Bom 183.

97 As to what is a '*mutt*' within the scope of the Madras Hindu Religious Endowments Act, see *Raghavendra Swami Mutt v Board of Commrs HRE, Madras*, AIR 1957 AP 150.

98 *Vidyapurana v Vidyanidhi*, (1904) 27 Mad 435; *Sammantha v Sellappa*, (1879) 2 Mad 175, p 179; *Giyana v Kandasami*, (1887) 10 Mad 375, p 389.

99 *Vidya Varuthi v Balusami*, 48 IA 302.

100 *Vidyapurna v Vidyanidhi*, (1904) 27 Mad 435.

101 *Nirmal Kumar Banerji v Jyoti Prasad Banerji*, (1941) 2 Cal 128 : 197 IC 761 : AIR 1943 Cal 562.

102 *Iswar v Kshetra*, AIR 1949 Cal 253.

103 *Piara Singh v Guru Granth Sahib*, AIR 1973 P&H 470.

104 *Prosunno Kumari v Golab Chand*, (1875) 14 Beng LR 450, p 459 : 2 IA 145, p 152; *Pramatha Nath v Pradyumna*, (1925) 52 IA 245, pp 251–52 : 52 Cal 809, p 816 : 87 IC 305 : AIR 1925 PC 139.

Property held by a math.—A *math*, like an idol, is in Hindu law, a juridical person capable of acquiring, holding and vindicating legal rights, though of necessity, it can only act in relation to those rights through the medium of some human agency. When the property is vested in the *math*, then litigation in respect of it has ordinarily to be conducted by, and in the name of the manager (*mahant*).[105]

Idols and maths are both, juridical persons.—The Hindu law, like the Roman law and those (systems of law) derived from it, recognises not only corporate bodies with rights of property vested in the corporation, apart from its individual members, but also the juridical persons or subjects called foundations.[106]

Though there are some points of similarity between a minor and a Hindu idol, still the idol is not a perpetual minor.[107]

Suit in the name of temple.—A temple is not a juridical person; no suit, therefore, relating to the temple property, can be instituted in the name of the temple.[108]

Although, a Hindu idol has a juridical status, it cannot be regarded as a 'person' capable of cultivating lands personally in the context of the Bombay Tenancy and Agricultural Lands (Vidarbha) Act of 1958.[109] However, it is a juristic entity capable of holding property and of being taxed through its *shebaits*.[110] Hindu law accords recognition to an idol as a juristic person, which is capable of holding property. An idol hitherto unknown to Hindu *Shastras*, but of which the investiture ceremony has been undertaken by proper consecration as ordained by the Hindu *Shastras*, cannot be termed as a fake deity and is to be termed as a juridical person capable of holding property.[111]

Management.—Where in case of a public temple, there was no proof as regards exclusive right of management nor any deed conferring such right, the Supreme Court directed framing of a scheme for the purpose.[112]

Right to sue.—The idol itself is a juridical person with the power of suing and being sued.[113]

Section 92, Code of Civil Procedure, 1908 is not a bar to the maintainability of a suit by the idol for possession of its property from a person who is in illegal possession of the same.[114] The Privy Council held in *Maharaja Jagadindra Nath Roy v Hemanta Kumari Debi*,[115] that:

> ...possession and management of the dedicated property belong to the *shebait* and this carries with it the right to bring whatever suits are necessary for the protection of the property.

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105 *Babajirao v Laxmandas*, (1904) 28 Bom 215, p 223.

106 *Manohar v Lakhmiram*, (1888) 12 Bom 247, p 263 affirmed in *Chotalal v Manohar*, (1900) 24 Bom 50 : 26 IA 199; *Narasimha v Venkatalingam*, (1927) 50 Mad 687 : 103 IC 302 : AIR 1927 Mad 636; Re *Sarjubai*, (1944) Nag 81 (FB). Also see *Lakshmi Narayan v State of Bihar*, AIR 1978 Pat 330.

107 *Tarit Bhusan Roy v Sree Iswar Sridhar Salgramsila Thakur*, (1941) Cal 477 : 199 IC 486 : AIR 1942 Cal 99.

108 *Thakardwara Pheru Mal v Ishar Das*, (1928) 9 Lah 588 : 110 IC 384 : AIR 1928 Lah 375.

109 *Kalanka Devi Sansthan v Maharashtra Revenue Tribunal*, AIR 1970 SC 439.

110 *Jogendra Nath v IT Commr*, AIR 1969 SC 1089.

111 *Ram Jankijee Deities v State*, AIR 1999 SC 2131 (over ruling *Ram Jankee v State*, AIR 1992 Pat 135).

112 *Jagdish Prasad v Mahant Tribhuvan Pair*, AIR 1988 SC 323.

113 *Pramatha Nath v Pradyumma*, (1925) 52 IA 245. Reference may be made to *Jagesh Chandra v Sri Iswar Braj Raj Thakur*, AIR 1981 Cal 259 (suit against *shebait* by a person as next friend of the deity).

114 *Bishwanath v Radha Ballabhji*, AIR 1967 SC 1044.

115 *Maharaja Jagadindra Nath Roy v Hemanta Kumari Debi*, (1904) 31 IA 203. : ILR 32 Cal 129 (PC).

When a *shebait* is unwilling or incapable of bringing a suit, such suit can be instituted by the prospective *shebait*, the heirs of the founder, or any person interested and the deity itself can sue through a next friend.[116] In any such case, as was pointed out by the Supreme Court,[117] a person interested in the worship of the idol can certainly be clothed with an *ad hoc* power of representation to protect its interest. Reference may also be made to the undermentioned cases.[118]

As to a suit on behalf of a deity against the *shebait*, see *Bhagabat v Ajodhya Das*.[119]

The Madras High Court has held in a full bench case that in the absence of a *de jure* trustee, a *de facto* trustee of a public religious or charitable endowment, who is in possession and management of the institution, is entitled to maintain a suit for recovery of trust property against an adverse claimant.[120]

Female manager.—There is nothing to prevent a female from being the manager of a religious endowment, but she cannot perform any spiritual functions.[121] According to the practice and precedents prevalent in the Madras state, a Hindu female is not incompetent because of her sex to succeed to the office of an *acharya* in a temple and to the emoluments attached thereto.[122]

Trustees.—Property belonging to a religious institution may, by the usage and custom of the institution, vest in trustees other than the spiritual head.[123]

§ 411. Position of *shebait* and *mahant*.—(1) *Shebait* —A *shebait* is, by virtue of his office, the administrator of the property attached to the temple of which he is the *shebait*. Both the elements of office and property or duties and personal interest are blended together in the conception of *shebaitship* and neither can be detached from the other.[124] As regards the property of the temple, he is in the position of a trustee. However, as regards the service of the temple and the duties that appertain to it, he is rather in the position of the holder of an office or dignity.[125] It would be wrong to regard him as a mere *pujari* or *archak*.[126] It cannot be said that a *Maharaja* was or continued to be a *shebait* when certain temples were transferred to the government and were also earlier deleted from the private properties of the ruler.[127]

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116 *Girish v Upendra*, 35 CWN 768; *Sree Sree Gopal v Baldeo Narain*, (1946) 2 Cal 447; *Monmohan Haldev v Dibhendra*, AIR 1944 Cal 199; *Mahadoba Devasthan v Mahadoba*, (1952) 54 Bom LR 645 : AIR 1953 Bom 38 : (1952) ILR Bom 1971; *Sushama Roy v Atul Krishna*, AIR 1955 Cal 624; *Thakur Sree Sree Annopurna Devi v Shiba Sundari Debi*, (1944) 2 Cal 344; *Vishwakarma Mandir Trust v Madan Mohan Prasad*, AIR 1986 Pat 158 (suit can be brought by a co-trustee looking after management of the properties).

117 *Bishwanath v Radha Ballabhji*, AIR 1967 SC 1044.

118 *Jangi Lal v Panna Lal*, AIR 1957 All 743; *Iswara Dashabhuja v Kanchanbala*, AIR 1977 Cal 473. In exceptional cases, persons other than a *shebait* can sue—*Kishore v Guman*, AIR 1978 All 1.

119 *Bhagabat v Ajodhya Das*, AIR 1978 Ori 194.

120 *Sankaranarayana Ayyar v Sri Poovanatha Swami Temple*, (1950) Mad 191 (FB); *Ganesamuthuriar v Sri Koruppuswamy*, AIR 1975 Mad 23.

121 *Janoki Debi v Gopal*, (1882) 9 Cal 766, 10 IA 32; *Keshavbhai v Bhagirathibai*, (1866) 3 Bom HCAC 75.

122 *Annaya v Ammakka*, (1918) 41 Mad 886 : 47 IC 341 : AIR 1919 Mad 598 (FB).

123 *Arunachellam v Venkatchalapathi*, (1919) 46 IA 204 : 43 Mad 253 : 53 IC 288 : AIR 1919 PC 62.

124 *Commr, HRE, Madras v Swamiar*, AIR 1954 SC 282 : (1954) 1 SCR 1005.

125 *Ramanathan v Murugappa*, (1906) 29 Mad 283 : 33 IA 139; *Moti Das v SP Sahi*, AIR 1959 SC 942.

126 *Sree Kalimata Thakurani v Jibandhan*, AIR 1962 SC 1329.

127 *Srikant Datta v State of Karnataka*, AIR 2001 Kant 373.

It was laid down by the Judicial Committee, that a *shebait* has not the legal ownership in, but only the title of manager of a religious endowment.[128] It follows from this that the rent of property dedicated to the services of an idol,[129] as well as offerings made to the idol (§ 419), belong to the idol, and not to the *shebait*. A *shebait* being a manager only, ceases to be a *shebait* when he ceases to manage the property and carry on the worship of the idol. Where the founder has reserved to himself the *puja* of the idol he is the *shebait*, but if he chooses not to administer the endowment property and appoints another to perform the duty, the former is competent to dismiss the latter.[130]

Benami purchase by shebait of debutter property.—As a *shebait* occupies a fiduciary position with respect to *debutter* property, a purchase of such property by him *benami* and without disclosing that he is the real purchaser, is invalid, even if he buys at a sale execution proceedings and has paid the full market value.[131] The purchase may, however, be legal having regard to the facts and circumstances of the case, for instance, where the *shebaits* have no fiduciary relationship in their dealings.[132]

Adverse possession.—No *shebait* can, as long as he continues to be the *shebait*, claim adverse possession against the idol for that would be a notion void of all content.[133]

Transfer of shebaitship.—Neither a temple, nor a deity nor the right of a *shebait*, can be transferred for pecuniary consideration. Such transfer would be void and illegal.[134]

Shebaitship is immovable property.—The hereditary office of *shebait* enjoyed by turn is immovable property and a gift of it must be by registered instrument.[135]

(2) *Mahant.*—The property of a *math* is held by the *mahant* as spiritual head of the institution, but the property may by the usage and custom of the institution vest in trustees other than the spiritual head. In any case, the property is held solely in trust for the purposes of the institution;[136] surplus income must be added to the endowment and not applied for the personal enjoyment of the head of the *math*.[137] A *mahant* is not a trustee in the English legal sense of the term.[138] His functions and duties are regulated by custom. His very wide discretion as to the application of the income is subject to the obligation to manage the property so as to serve effectively the objects for which the *math* exists.[139] In the conception of *mahantship*, as in

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128 *Shibessouree v Mothooranath*, (1869) 15 MIA 270, 273.
129 *Bhuban Mohan v Narendra Nath*, (1931) 35 CWN 478 : 135 IC 865 : AIR 1932 Cal 27.
130 *Ram Das v Shri Ram Lakshman Janki*, (1943) All 845 : 209 IC 463 : AIR 1943 All 352.
131 *Peary Mohan v Manohar*, (1921) 48 IA 258 : 62 IC 76 : AIR 1922 PC 235. Reference may be made to *Amal Deb v Biswanath*, AIR 1984 Cal 85 (purchase by *shebait* at auction sale of *debutter* property may, however, be legal having regard to the facts and circumstances of the case, for instance, where the *shebaits* had no financial relationship in their dealings).
132 *Amal Deb v Biswanath*, AIR 1984 Cal 85 (auction sale).
133 *Sree Sree Ishwar v Sushila Bala*, (1954) 1 SCR 407; *Surendrakrishna Ray v Shree Shree Ishwar*, (1933) 60 Cal 54, 77.
134 *Kali Kinkor v Panna*, AIR 1974 SC 1932.
135 *Ram Rattan v Bajrang Lal*, AIR 1978 SC 1393.
136 *Gobinda Ramanuj Das Mohanta v Mohanta Ramchandaran Ramanuj Das*, (1936) 63 Cal 326.
137 *Arunachellam v Venkatachalapathi*, (1919) 46 IA 204 : 53 IC 288 : AIR 1919 PC 62; *Ram Parkash Das v Anand Das*, (1916) 43 IA 73 : 33 IC 583 : AIR 1916 PC 256; *Sethuramaswamiar v Mertuswamiar*, (1918) 45 IA 1 : 41 Mad 296 : 43 IC 806 : AIR 1917 PC 190; *Balaswamy v Venkataswamy*, (1917) 40 Mad 745 : 40 IC 531 : AIR 1918 Mad 984.
138 *Ananta Krishna Shastri v Prayag Das*, (1937)1 Cal 84.
139 *Mahant Kehso Das v Amar Dasji*, (1935) 14 Pat 379 : 156 IC 1099 : AIR 1935 Pat 111.

shebaitship, both the elements of office and property are blended together and neither can be detached from the other. The personal or beneficial interest of the *mahant* in the endowments attached to an institution is manifested in his large powers of disposal and administration and his right to create derivative tenures in respect of endowed properties; and these and other rights of a similar character of proprietary right which, though anomalous to some extent, is still a genuine legal right. A *mahant*, as a superior of a *math*, has, in addition to his duties, a personal interest of a beneficial character which is much larger than that of a *shebait* in *debutter* property.[140] *Mahant* of a *math*, though not duly installed, can maintain a suit to recover the property for its benefit from trespassers.[141]

The hereditary trusteeship of a religious institution constitutes 'property' within the ambit of section 7 of the Guardian and Wards Act, 1890.[142]

Dharmakarta.—A *dharmakarta* is no more than a manager, and his rights, apart perhaps from the question of personal support, are never higher than those of a mere trustee; in this respect, he differs from a *shebait* or the head of a *math*. Those functionaries have a much higher right with larger powers of disposal and administration.[143] Reference may be made to the full bench decision of the Madras High Court.[144] Referring to the full bench decision, the Madras High Court in another case held that a testator creating a trust under a will in favour of certain persons without any further direction as to succession, must be deemed to have prescribed succession in favour of the trustees and heirs.[145]

Poojari Dharmadhaikari.—A *poojari* is not a *shebait*.[146] In case of small temples with meagre income, the office of hereditary *poojari* and trusteeship may vest in the same individuals.[147]

Office of hereditary trustee.—The position of a hereditary trustee of a religious or charitable endowment or institution is not in any way different from that of a *dharmakarta* or a mere manager or custodian of any such endowment or institution. The only difference being that he succeeds to the office as of right and in accordance with the rules governing succession. His position cannot be equated with that of a *shebait* or the head of a *math*.[148]

Maintenance of chela or disciple.—Though the head of a *math* is bound to maintain his disciples, and such maintenance is a legitimate expenditure of the *math* property, yet no specific right in favour of individual *chelas* can be recognised, apart from usage, which can be made the subject matter of a suit. The remedy in such cases is the general remedy by way of administration of trust.[149]

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140 *Commr, HRE, Madras v Swamiar*, AIR 1954 SC 282 : (1954) 1 SCR 1005.

141 *Mahadeo Prasad Singh v Karia Bharti*, (1935) 57 All 159 : 62 IA 47 : 153 IC 1100 : AIR 1935 PC 44; *Sri Radha Krishna Asthapit Thakurdwara v Maharaj Kunwar*, (1937) 12 Luck 331 : 164 IC 919 : AIR 1937 Ori 69.

142 *Kanteti v Venkateswara*, AIR 1950 AP 232.

143 *Srinivasa Chariar v Evalappa Mudaliar*, (1922) 49 IA 237 : 68 IC 1 : AIR 1922 PC 325.

144 *Manathunainatha v Sundaralingam*, AIR 1971 Mad 1 (FB); *Jayarama v Tirupathi*, AIR 1972 Mad 183; *Santhanam Iyer v Sundarathanmal*, AIR 1981 Mad 244 (succession in favour of wife of last holder).

145 *Pappa v Shanmughathammal*, AIR 1991 Mad 90.

146 *Veerabasavaradhya v Devotees of Lingadagudi Mutt*, AIR 1973 Mys 280.

147 *Venkataraman v VLA Thangappa*, AIR 1972 Mad 119.

148 *KA Samajam v Commr of HR and CE*, AIR 1971 SC 891.

149 *Ramamohan Das v Basudeb*, AIR 1950 Ori 28.

Married mahants.—As a rule, the *mahant* is a celibate. There are certain exceptional cases where the *mahant*, who presides over the *math*, is permitted to marry. There are instances of *maths* in which the *mahantship* descends to a personal heir of the *mahant*.[150]

Personal property of mahant.—A *mahant* of a *math* may own and acquire personal property. Reference may be made to *Gurcharant Prasad v Krishnanand*, a case decided by Supreme Court.[151] The undermentioned case affords an additional instance of a *mahant* of Dashnami Sanyas *math* having personal properties acquired out of his personal earnings.[152]

§ 412. Alienation of *debutter* property.—(1) As a general rule of Hindu law, property given for the maintenance of religious worship, and of charities connected with it, is inalienable. It is competent, however, for the *shebait* or *mahant* in charge of the property, in his capacity of *shebait* or *mahant* and as manager of the property, to incur debts and borrow money on a mortgage of the property for the purpose of keeping up the religious worship, and for the benefit and preservation of the property. The power, however, to incur debts must be measured by an existing necessity for incurring them.

(2) The power of a *shebait* or a *mahant* to alienate *debutter* property is analogous to that of a manager for an infant heir as defined by the Judicial Committee in *Hunooman Persaud v Babooee (Mst)*.[153] As held in that case, he has no power to alienate debutter property except 'in a case of need or for the benefit of the estate'. He is not entitled to sell the property for investing the price of it to bring in an income larger than that derived from the property itself. Nor can he, except for legal necessity, grant a permanent lease of *debutter* property, though he may create proper derivative tenures and estates conformable to usage.[154] Where, however, a grant of a permanent lease has been affirmed by judgment of the court, the judgment will operate as *res judicata*, and the succeeding *shebait* or *mahant* will be bound by it.[155]

Powers of shebait and mahant.—It has been observed that:

> It is only in an ideal sense that property can be said to belong to an idol and possession and management of it must in the nature of things be entrusted to some person as *shebait*, or manager. It would seem to follow that the person so entrusted must, of necessity, be empowered to do whatever may be required for the service of the idol, and for the benefit and preservation of its property, at least to as

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150 *Tulasiram v Ramprasanna*, AIR 1956 Ori 41. As to celibacy and *mahants*, reference may be made to *Swami Harbanschari v State*, AIR 1981 MP 82 (case-law).

151 *Gurcharant Prasad v Krishnanand*, AIR 1968 SC 1032.

152 *Mathsona v Kedar Nath*, AIR 1981 SC 1878.

153 *Hunooman Persaud v Babooee (Mst)*, (1856) 6 MIA 393.

154 *Sridhar v Shri Jagan Nath Temple*, AIR 1976 SC 1860; *Prosunno Kumari v Golab Chand*, (1875) 2 IA 145 : 14 Beng LR 450 (mortgage); *Abhiram v Shyama Charan*, (1909) 36 Cal 1003 : 36 IA 148 : 4 IC 449 (lease); *Palanippa v Deivasikamony*, (1917) 44 IA 147 : 39 IC 722 : AIR 1917 PC 33 (lease); *Vidya Vaaruthi v Balusami*, (1921) 48 IA 302 : 44 Mad 831 : 65 IC 161 : AIR 1922 PC 123 (lease); *Konwar Doorganath v Ram Chunder*, (1877) 2 Cal 341, 351 : 4 IA 52 : 62 (lease); *Shibessouree v Mothoornath*, (1869) 13 MIA 270 (lease); *Ramachandra v Kashinath*, (1895) 19 Bom 271; *Prosunno Kumar v Saroda*, (1895) 22 Cal 989; *Sheo Shankar v Ram Shewak*, (1897) 24 Cal 77; *Parsotam Gir v Dat Gir*, (1903) 25 All 296; *Ram Chandra v Ram Krishna*, (1906) 33 Cal 507; *Muthusanier v Sreemethanithi*, (1915) 38 Mad 356 : 19 IC 694 : AIR 1916 Mad 332; *Mahanth Jai Krishna v Bhukhal*, (1921) 6 Pat LJ 638 : 65 IC 290 : AIR 1922 Pat 165 (lease); *Ramchandarji Maharaj v Lalji Singh*, AIR 1959 Pat 305, ILR 38 Pat 49.

155 *Shibessouree v Mothoornath*, (1869) 13 MIA 270.

> great a degree as the manager of an infant heir. If this were not so, the estate of the idol might be destroyed or wasted, and its worship discontinued, for want of the necessary funds to preserve and maintain them.[156]

A *mahant* cannot alienate any asset of the *math* for benefit of his dependants.[157]

A *shebait* cannot delegate his duties, though he may appoint a sub-agent for the purpose of carrying out his duties in the usual course of business. A lease granted by a sub-agent without the knowledge of the *shebait* is not binding on the temple.[158]

Permanent lease.—Except for an unavoidable necessity, the head of a *math* cannot create any interest in the *math* property to enure beyond his life.[159] A permanent lease of temple lands at a fixed rent, or rent-free for a premium, whether the lands are agricultural lands or a building site, is valid only if made for a necessity of the institution. It is not permissible by a local custom, or by a practice of the institution, to grant lands in that manner.[160] In *Abhiram v Shyama Charan*,[161] where the question arose as to whether a permanent lease granted by a *mahant* was valid, it was held that it was not, as there was no legal necessity for it. In the case of *Konwar Doorganath Roy v Ram Chunder Sen*,[162] a *mokarrari pottah* of *debutter* land, was supported on the ground that it was granted in consideration of money said to be required for the repair and completion of a temple, for which no other funds could be obtained. However, the general rule is laid down in the case of *Shibessouree Debia v Mothooranath Acharjo*,[163] that apart from such necessity to create a new and fixed rent for all time, though adequate at that time, in lieu of giving the endowment the benefit of an augmentation of a variable rent from time to time, would be a breach of duty in the *mahant*.

Legal necessity.—In *Prosunno Kumari v Golab Chand*,[164] their Lordships of the Privy Council said: 'The power, however (of a *shebait*), to incur debts must be measured by the existing necessity for incurring them'.

In that case, it was found that the *shebait* was a man of profligate habits, and that he, having spent the income of the *debutter* property on his own pleasures, borrowed Rs 4,000 to defray the expenses of the worship of the idol, and mortgaged the property as security for the advance.

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156 *Prosunno Kumari v Golab Chand*, (1875) 14 Beng LR 450, 459 : 2 IA 145, 152; *Pashupathinath Seal v Pradyumnakumar Mallik*, (1936) 63 Cal 454; *Durga Thakurani v Chintamani Sivain*, AIR 1982 Ori 158 (specific performance of contract for sale of property of a private deity ordered).

157 *Mahadeo Nath v Meena Devi*, AIR 1976 All 64.

158 *Shree Shree Gopal Shreedhar Mahadeb v Shasheebhushan Sarkar*, (1933) 60 Cal 111 : 142 IC 465 : AIR 1933 Cal 109.

159 *Vidya Varuthi v Balusami*, 48 IA 302 : ILR 44 Mad 831 : 65 IC 161 : AIR 1922 PC 123; *Deosthan v Ramdayal*, (1944) ILR Nag 51.

160 *Palaniappa v Deivasikamony*, 44 IA 147 : ILR 40 Mad 709 : 39 IC 722 : AIR 1917 PC 33; *Sridhar v Sri Jagan Nath*, AIR 1976 SC 1860 (Sanand held to be only licence and not lease) *Gobinda Ramanuj Das Mohanta v Mohanta Ramcharan Ramanuj Das*, (1936) 63 Cal 326; *Srinath Daivasikhamani v Periyanan Chetti*, (1936) 36 IA 261 : ILR 59 Mad 809 : 38 Bom LR 702 : 162 IC 465 : AIR 1936 PC 183; *CJ Mutt Tirupathi v CV Purushotham*, AIR 1974 AP 175; *GV Kalmath v Vishnu Deo*, AIR 1973 Mys 207 (Vahivatdar).

161 *Abhiram v Shyama Charan*, (1909) 36 Cal 1003 : 36 IA 148, 165 : 4 IC 44; *Prosunno Kumari Debya v Gulab Chand*, (1875) 2 IA 145.

162 *Konwar Doorganath Roy v Ram Chunder Sen*, (1887) 2 Cal 341 : 4 IA 52; *SGP Committee v Seva Singh*, AIR 1973 P&H 414 (unmanageable lands).

163 *Shibessouree Debia v Mothooranath Acharjo*, (1869) 13 MIA 270.

164 *Prosunno Kumari v Golab Chand*, (1875) 2 IA 145 : 151–52, 14 Beng LR 450 (mortgage).

In a suit to enforce the mortgage, a decree was passed for the mortgagee providing for the realisation of the loan out of the profits of the mortgaged property. In a suit by the successor to set aside the decree, it was held that the debts having been contracted for legal necessity, the decree were binding upon the successor in office, and that decision was confirmed by the Judicial Committee. The principle of that decision was applied by the Judicial Committee in the later case of *Niladri Sahu v Mahant Chaturbhug Das.*[165] In that case, the *mahant* of a *math* borrowed money at two per cent *mensem* mainly for constructing *pakka* buildings for the accommodation of wealthy devotees visiting the *math* and in part for the ordinary expenses of the worship. Afterwards, he mortgaged certain properties of the *math* at one per cent *per mensem* in order to discharge the loan at two per cent *per* mensem, which was an accumulating burden upon the endowment. In a suit to enforce the *mortgage*, it was held that the mortgage was for legal necessity so as to be within the power of the *mahant*, even if the original loans were incurred recklessly and not for the benefit of the *math*, which, however, was not shown to be the case. In the course of the judgment their Lordships said:

> The importance of this case in its application to the present consists in this, that it was the immediate not the remote cause, the *causa cousans* of the borrowing which has to be considered.

The principle was applied by the Supreme Court where a *mahant* had borrowed money to meet legal expenses of litigation against a trespasser claiming hostile title against the *math* and had executed a mortgage and subsequently a sale of the *math* property.[166]

Though a *mahant* has agreed in a suit to the validity of an alienation made without legal necessity, his successor is not bound by such agreement, and it cannot prevent an investigation into the original nature of the transaction.[167]

Constructing *pakka* buildings for the accommodation of visitors to a *math* is a legal necessity.[168] So in addition, is the rebuilding of a dining hall for feeding visitors.[169]

'For the benefit of the estate'.—The phrase 'benefit of the estate,' as used in the decisions with regard to the circumstances justifying an alienation by the manager for an infant heir or by the trustee of a religious endowment, cannot be precisely defined, but includes the preservation of the estate from extinction, its defence against hostile litigation, its protection from inundation, and similar circumstances.[170]

Scheme.—As to alienation, where there is a scheme framed by the court, see *Jogendra Nath v Official Receiver.*[171]

§ 412A. Burden of proof of necessity.—(1) Where an alienation is made of *debutter* property, the burden lies on the alienee to prove either that there was a legal necessity in fact, or that he made proper and *bona fide* inquiries as to the existence of

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165 *Niladri Sahu v Mahant Chaturbhug Das,* (1926) 53 IA 253 : 98 IC 576 : AIR 1926 PC 112; *Laxmi Narasingha Swami v Patta Sahani,* AIR 1957 Oudh 86.

166 *Biram Prakash v Narendra Dass,* AIR 1966 SC 1011.

167 *Mahanth Ramdhan Puri v Parbati Kuer,* (1937) 16 Pat 476 : 171 IC 457 : AIR 1937 Pat 519.

168 *Niladri Sahu v Mahant Chaturbhuj Das,* (1926) 53 IA 253, 267 : ILR 6 Pat 139 : 98 IC 576 : AIR 1926 PC 112.

169 *Vibhudapriya v Lakshmindra,* (1927) 54 IA 228 : ILR 50 Mad 497 : 101 IC 545 : AIR 1927 PC 131.

170 Where this subject is fully discussed. *Palaniappa v Deivasikamony,* (1917) 44 IA 147, p 155 : 39 IC 722 : AIR 1917 PC 33; *Jogendra Nath v Official Receiver,* AIR 1975 Cal 389.

171 *Jogendra Nath v Official Receiver,* AIR 1975 Cal 389.

such necessity and did all that was reasonable to satisfy himself as to the existence of such necessity. An order of court, giving a trustee or *shebait* leave to mortgage the trust property, on the ground of necessity may be relied on by the mortgagee *as prima facie* evidence of his having made due and proper enquiries as to the necessity. Such an order cannot be questioned on the ground of defect of procedure or incorrect exercise of jurisdiction.[172] In fact, the rules as to burden of proof in the case of an alienee from a *shebait* or *mahant* are the same as those, which apply to the case of an alienee from the manager for an infant heir.[173] Those rules are set forth in §§ 182 and 242. The notes to § 241 may also be referred to as throwing further light on the subject. Where only a portion of the loan is proved to have been applied to purposes of necessity, the rule laid down in § 243 applies.[174]

Where the validity of a permanent lease granted by a *shebait* comes in question, a long time after the grant, so that it is not possible to ascertain what were the circumstances in which it was made, the court should assume that the grant was made for necessity so as to be valid beyond the life of the grantor.[175]

§ 412B. Who can maintain a suit.—In § 410, reference has already been made to the right of a *shebait* and a *mahant* to bring a suit for the protection of the property of a *devasthanam*, temple or *math*. It is also well-established that a person who has been in *de facto* possession and management of *math* properties, has sufficient interest to maintain a suit for the protection of the interest of the public trust. Such a person can maintain a suit for the benefit of the *math*.[176]

§ 413. Creditor's suit for money lent for legal necessity.—(1) Where a *shebait* or *mahant* contracts a debt for legal necessity, the creditor is entitled to a decree against him providing for the payment of the decretal amount out of the profits of the *debutter* property, even if no charge was created on the property to secure the loan. After the death of the debtor, the creditor is entitled to a similar decree against his successor.[177]

In a case where the loan was made for legal necessity, the proper decree to be passed in a creditor's suit, whether the loan be secured or unsecured, and whether the suit is brought against the debtor or his successor, is one directing the defendant to pay the decretal amount within a fixed period, and directing further that if the amount is not paid within that period, a receiver shall be appointed to realise the

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172 *Pashupathinath Seal v Pradyumnakumar Malik*, (1936) 63 Cal 454.

173 *Konwar Doorganath v Ram Chunder*, (1877) 2 Cal 341, 351–52 : 4 IA 52, 62–64; *Murugesam v Manickavasaka*, (1917) 44 IA 98 : ILR 40 Mad 402 : 39 IC 569 : AIR 1917 PC 6; *Baidyanath v Kunja Kumar*, AIR 1949 Pat 75. As to burden of proof, reference may also be made to *Chedda Lal v Ujiaray Lal*, AIR 1987 All 127.

174 *Konwar Doorganath v Ram Chunder*, ILR 2 Cal 341.

175 *Bawa Magniram v Kasturbhai*, 49 IA 54 : 66 IC 162 : AIR 1922 PC 163 (lease impeached after 100 years).

176 As to suit on behalf of the idol, reference may be made to notes under § 413. *Mahanth Ram Charan Das v Naurangi Lal*, (1933) 60 IA 124, 126; *Mahadeo Prasad Singh v Keria Bharti*, 62 IA 47; *Mahant Ram Sarup Das v Lakshmi Ojha*, (1957) 36 Pat 1022. However, if he claims to sue as a *shebait*, he must make out that basis of his claim, *Chamelibai v Ramchandrajee*, AIR 1965 MP 167.

177 *Shankar v Venkapa*, (1885) 9 Bom 422; *Sree Iswar Gopal Jieu v Pratapmal*, AIR 1951 SC 214 affirming *Pratap Mull v Iswar Gopal Jiew*, 48 CWN 172; *Srinath Daivasikamani v Noor Mahomed*, (1908) 31 Mad 47; *Lakshmindrathirtha v Baghavendra*, (1920) 43 Mad 759 : 59 IC 287 : AIR 1920 Mad 678; *Sundaresan v Viswanada*, (1922) 54 Mad 703 : 72 IC 103 : AIR 1922 Mad 402; *Vibhundapriya v Lakshmindra*, (1927) 54 IA 228, p 230 (argument of counsel), 101 IC 545 : AIR 1927 PC 131.

rents and profits of the *debutter* property and the proceeds from offerings, etc. This realisation is subject to the payment of all expenses connected with the institution and the performance of the ceremonies and festivals and a reasonable provision for the maintenance of the *shebait* or *mahant*; the balance shall be applied in discharge of the plaintiff's debt until such debtor has been paid off.[178]

§ 414. Decree against *shebait* or *mahant*, when binding on successor.—It being competent to a *shebait* or *mahant* to borrow money for necessary purposes, it follows that judgments obtained against a *shebait* or *mahant* in respect of debts so incurred, are binding upon his successors who form a continuing representation of the *debutter* or endowed property. However, before applying the principle of *res judicata* to such judgments, the court should be satisfied that the judgments relied upon were not obtained by fraud or collusion, and that the necessary and proper issues were raised, tried, and decided in the suits which led to them.[179] If the decree is based on compromise, the courts should be satisfied that the compromise was entered into *bona fide* in the interest of the temple or *math*.[180]

Temple.—A temple cannot be sold in execution of a decree against the *mahant* or *shebait*.[181]

§ 415. Devolution of office of *mahant*: Nomination.—(1) The succession to the office of *mahant* depends on the usage of each particular *math*. As observed by their Lordship of the Privy Council:

> ...the only law as to mahants and their office, functions and duties is to be found in custom and practice, which is to be proved by testimony.

The custom that prevails in the majority of cases is that the *mahant* nominates his successor by appointment during his lifetime or by will. Where there is no such custom, or where no nomination has been made, the usage of some institutions is to have a successor appointed by a system of election by all the *mahants* of the sect in the neighbourhood. In some cases, the succession depends upon election by the disciples and followers of the *math*.[182] In *Amar Parkash v Prakash Nand*, the Supreme Court has noticed the position about appointment or nomination of a successor by the reigning *mahant*.[183] Reference may also be made to *Krishna Singh v Mathura Ahir*,

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178 *Vibhudapriya v Lakshmindra*, (1927) 54 IA 228 : ILR 50 Mad 497 : 101 IC 545 : AIR 1927 PC 131; *Niladri Sahu v Mahant Chaturbhuj Das*, (1926) 53 IA 253 : 6 Pat 139 : 98 IC 576 : AIR 1926 PC 112.

179 *Prosunno Kumari v Golab*, (1875) 14 Beng LR 450 : 2 IA 145.

180 See section 11, Explanation VI, Code of Civil Procedure 1908. *Manikka v Balagopalakrishna*, (1906) 29 Mad 553.

181 *Mukundji Maharaj v Persotam*, AIR 1957 All 77.

182 *Gredharee Doss v Nundokissore Doss*, (1857) 11 MIA 405, 428; *Genda Puri v Chatar Puri*, (1837) 9 All 1 : 13 IA 100; *Ramalingam v Vythilingam*, (1893) 16 Mad 490 : 20 IA 150; *Ram Prakash Das v Anand Das*, (1916) 43 IA 73 : 43 Cal 707 : 33 IC 583 : AIR 1916 PC 256; *Lahar Puri v Puran Nath*, (1915) 42 IA 115 : 37 All 298 : 29 IC 724 : AIR 1915 PC 4; *Bhagaban v Ram Prapanna*, (1895) 22 Cal 843 (PC); *Madho Das v Kamta Das*, (1878) 1 All 539; *Vidyapurna v Vidyanidhi*, (1904) 27 Mad 435; *Trimbakpuri v Ganga Bai*, (1887) 11 Bom 514; *Bishambar Das v Phulgari*, (1930) 11 Lah 673 : 125 IC 621 : AIR 1930 Lah 715; *Premanand Bharaty v Yogendra Bharaty*, (1965) Ker LT 824.

183 *Amar Parkash v Prakash Nand*, AIR 1979 SC 845; *Rukminibai v Nanabuva*, (1979) Mah LJ 186 following *Mahant Bhagwan Bhagat v Girija Nandan*, AIR 1972 SC 814; *Iqbal Singh v Santokh Singh*, AIR 1984 P&H 366; *Ramdas v Vaishnavdas*, AIR 1983 MP 73 (the power of nomination must, of course, be exercised *bona fide* and in the interest of the *math* and not corruptly or for ulterior reasons).

a case decided by the Supreme Court relating to the Garvaghat *math* of the Satmat Sampradaya.[184] The appointment as a general rule is to be made from among the disciples of the deceased *mahant*, and failing, disciples from among his spiritual kindred.[185] Where the *mahant* has the power to appoint his own successor, he cannot delegate or transfer that power to a *mahant* of a neighbouring *math* or to any other person.[186] Custom and usage play an important role in the appointment of a *mathadhipati*. When neither the statute nor the rules of succession confer powers upon a court to appoint such a person, the appointment would be invalid.[187]

For a nomination to be valid, performance of religious ceremonies are not mandatory unless, of course, the usage of the institution has made it absolutely necessary,[188] that there should be ceremonies relating to installation. As to the head of a *math*, being a celibate, reference may be made to the undermentioned cases.[189]

(2) It is well-established that religious offices can be hereditary and that the right to such an office is in the nature of property. In *Commissioner, Hindu Religious Endowments, Madras v Sri Lakshmindra Thirtha Swamiar*,[190] the Supreme Court reiterated and extended the rule to the office of a *mahant*.

(3) *Partition.*—The headship of a *math* is not a matter of partition;[191] nor is the property of the *math*.[192]

As to succession to the head of Kasi *math*, see *Mahalinga Thambiran v Arulnandi Thambiran*.[193]

As to *Garvaghat math* of the Satmat Sampradaya, see *Krishna Singh v Mathura Ahir*.[194] By custom, a *Sudra* can be ordained to religious order and he can be installed as a *mahant* of this *math*.

In the case of a *maurasi math*, the senior *chela* succeeds *a fortiori* in the absence of a valid nomination by the reigning *mahant*.[195] The *mahant* can change nomination of a *chela* to become successor made in a will by another will.[196] As to succession to *Turki Asthal*, see *Girjanand v Bhagwan*.[197]

Where the appointment of a successor is not made *bona fide* in the interests of the *math*, but in furtherance of the interests of the appointer, the appointment is invalid.[198] Similarly, a collusive appointment is nevertheless valid.[199]

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184 *Krishna Singh v Mathura Ahir*, AIR 1980 SC 707.
185 *Sital Das v Sant Ram*, AIR 1954 SC 606.
186 *Mahanath Ramji v Lachhu*, (1902) 7 CWN 145.
187 *Shilpi Papachar v State of Karnataka*, AIR 2003 Kant 111.
188 *Krishna Singh v Mathura Ahir*, AIR 1980 SC 707 : (1972) 2 SCR 1005, 1010; *MB Bhagat v CV Bhagat*, AIR 1972 SC 814.
189 See observations in *Krishna Singh v Mathura Ahir*, AIR 1980 SC 707; *Swami Harbans Chari v State*, AIR 1981 MP 82, and the decisions cited there.
190 *Commissioner, Hindu Religious Endowments, Madras v Sri Lakshmindra Thirtha Swamiar* (1954) 1 SCR 1005 : AIR 1954 SC 282; *Raj Kali Kuer v Ram Rattan Pandey*, (1955) 2 SCR 186 : AIR 1955 SC 493.
191 *Sethuramaswamiar v Meruswamiar*, (1918) 45 IA 1, p 9 : 43 IC 803 : AIR 1917 PC 190.
192 *Gobinda v Ram Charan Das*, (1925) 52 Cal 748 : 89 IC 804 : AIR 1925 Cal 1107.
193 *Mahalinga Thambiran v Arulnandi Thambiran*, AIR 1974 SC 199.
194 *Krishna Singh v Mathura Ahir*, AIR 1980 SC 707.
195 *Gobinda v Ram Charan Das*, (1925) 52 Cal 748 : 89 IC 804 : AIR 1925 Cal 1107.
196 *Ramaprapanna v Sudarsan*, AIR 1961 Ori 137.
197 *Girjanand v Bhagwan*, AIR 1967 Pat 101.
198 *Ramalingam v Vythilingam*, (1893) 20 IA 150 : ILR 16 Mad 490; *Nataraja v Kailasam*, (1921) 48 IA 1 : ILR 44 Mad 283 : 57 IC 564 : AIR 1921 PC 84.
199 *Ram Prakash Das v Anand Das*, 43 IA 73 : ILR 43 Cal 707 : 33 IC 583 : AIR 1916 PC 256.

Where the head of a *math* designates his successor, but dies before the latter can be formally initiated, the appointment is not valid.[200]

When the usage of a *math* consisting of several *asthals*, has been to have only one *mahant*, a separation of the office, it would seem, is improper, unless there are special circumstances justifying it.[201] For *Puthravarga math*: *Muthina Kanthi math*, see *NPVM Hiramath v SMK Hiramath*.[202]

§ 416. Devolution of office of *shebait*.—(1) The devolution of the office of *shebait* depends on the terms of the deed or will by which it is created. Where there is no provision in the deed or will as to the succession or where the mode of succession prescribed in the deed or will comes to an end, the title to the property or to the management and control of the property as the case may be, follows the ordinary rules of inheritance according to Hindu law; in other words, it follows the line of inheritance from the founder and passes to his heirs,[203] unless there has been some usage or course of dealing which points to a different mode of devolution,[204] e.g. devolution on a single heir.[205] This rule is also applied where the right of nomination is given to a committee, but the committee has ceased to exist.[206] However, this rule cannot be applied to vest the *shebaitship* in persons who, according to the usages of the worship, cannot perform the rites of the office.[207]

In the undermentioned cases, it has been held that a founder cannot lay down a line of succession for *shebaitship* inconsistent with general law.[208] Nor can a *shebait* or *sarvarkar* alter the line of succession by making a gift to the deity or endowment and by unilaterally imposing conditions which would change the line of succession.[209] In the undermentioned cases, it has been held that it is competent to an heir of a

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200 *Krishnagiri v Shridhar*, (1922) 46 Bom 655 : 67 IC 129 : AIR 1922 Bom 202.

201 *Ram Charan v Gobinda*, (1928) 56 IA 104 : ILR 56 Cal 894 : 114 IC 571; AIR 1929 PC 65.

202 *NPVM Hiramath v SMK Hiramath*, AIR 1976 Kant 103.

203 *Chokalinga Setharayar v Arunanayakam*, AIR 1969 SC 569; *Profulla Chorone v Satya Chorone*, AIR 1979 SC 1682 (concept, legal character and incidents of shebaitship, distinction between public and private *debutter*. Also, construction of will). *Ganesh Chunder Dhur v Lal Behary Dhur*, (1936) 63 IA 448 : 38 Bom LR 1250 : 164 IC 347 : AIR 1936 PC 318; *Bhaba Tarini Debi v Asha Lata Debi*, (1943) 2 Cal 137 : 207 IC 377 : AIR 1943 PC 89; *Surendra Narayan Sarbadhikari v Bhola Nath Ray Chaudhuri*, (1944) 1 Cal 139; *Manathunainatha v Sundaralingam*, AIR 1971 Mad 1 (FB). Reference may also be made to *Venugopala v Krishnaswamy*, AIR 1971 Mad 262 (right of heir of founder); *Anath Bandhu v Krishna Lal* AIR 1979 Cal 168 (revert back to heirs of founder); *Bhut Nath v Kalipada Mandal*, AIR 1982 Cal 534, 536 (nature of right of succession—deeds of endowment).

204 *Gossami Sri Gridhariji v Ramanlalji*, (1890) 17 Cal 3, 16 IA 137; *Jagadindra Nath Roy v Hemanta Kumari Debi*, (1905) 32 Cal 129 : 31 IA 203; *Gnanasambanda v Velu*, (1900) 23 Mad 271, 27 IA 69; *Janoki v Gopal*, (1883) 9 Cal 766 : 10 IA 32; *Rajah Vurmah v Ravi Vurmah*, (1876) 1 Mad 235 : 4 IA 76; *Rajah Muttu v Perianayagum*, (1874) 1 IA 209; *Mohan v Madhsudan*, (1910) 32 All 461 : 6 IC 77; *Sheo Prasad v Aya Ram*, (1907) 29 All 663 : (1918) 45 IA 1 : ILR 41 Mad 296 : 43 IC 806 : AIR 1917 PC 190; *Sheoratan v Ram Pargash*, (1896) 18 All 227; *Chandrika Bakhsh Singh v Bhola Singh*, (1938) 13 Luck 344, 168, IC 593, AIR 1937 Ori 373; *Gulab Dass v Manohar Dass*, (1938) 13 Luck 577, 171 IC 81, AIR 1937 Ori 490; *Anuragi Kuer v Parmanand Pathak*, (1939) ILR Pat 171; *Jogendra Nath v Charan Das*, AIR 1958 Ori 160.

205 *Ayiswaryanandaji v Sivaji*, (1926) 49 Mad 116 : 92 IC 928 : AIR 1926 Mad 84.

206 *Dhram Narain v Suraj Narian*, (1940) ILR All 815 : 193 IC 697 : AIR 1941 All 1.

207 *Mohan Lalji v Gordhan Lalji*, (1913) 35 All 283 : 40 IA 97 : 19 IC 337; *Sri Sankareswar v Bhagbati*, AIR 1949 Pat 193.

208 *Hiranbala Devi v Bishnupada*, AIR 1976 Cal 404; *Anath Bandhu v Krishna Lal*, AIR 1979 Cal 168; *Manohar v Bhupendra Nath*, AIR 1932 Cal 791 (FB).

209 *Satyadevi v Behariji Maharaj*, AIR 1980 All 220.

founder of a shrine in whom the trusteeship has rested, owing to the failure of the line of the original trustee to create a new line of trustees.[210]

There is no power in a *shebait* to relinquish his right to exclude his heirs, where under the terms of the endowment, the right of *shebaitship* is inherited by heirs in direct line.[211]

(2) On the view that *shebaiti* is property, the Supreme Court in *Angurbala v Debobrata*,[212] recognised the right of a female to succeed to the religious office of *shebaitship*, where the question for consideration was as to the applicability of the Hindu Women's Right to Property Act, 1937. However, while the right to such office is property, it involves also substantial elements of duty. In the above case it was said:

> ...both the elements of office and property, of duties and personal interest are blended together (in such offices) and neither can be detached from the other.

In respect of such offices, especially where they are attached to public institutions, the duties are to be regarded as primary and that the rights and emoluments are only appurtenant to the duties.[213]

(3) When the office has become vested by descent in more than one person, it is lawful for the parties interested to arrange among themselves for the due execution of the functions belonging to the office in turn or in some settled order and sequence.[214] If the parties do not agree, then, if the right to worship carries with it the right to receive offerings, any one of them may sue for a division of the right just as he may sue for partition of the joint family property, and to have periods fixed during which he may exercise the right. Such a right is 'property' liable to partition, and the joint owners are entitled to perform the worship in turn.[215] However, if the right to worship does not carry with it the right to receive offerings, a suit for a division of the right does not lie. In such a case, the parties are bare managers or trustees, and the *debutter* property must be managed by them jointly.[216]

A civil court is competent to entertain a suit, the object of which is to have a scheme framed for the administration of a private *debutter*. If the deity is interested in the result of the suit, the deity will be made a party and, in cases in which the interests of the *shebaits* are adverse to those of the deity, it will have to be represented by a disinterested person; but if the only dispute relates to the right of management and the deity's interests will not be affected by the adjustment of the individual rights of the *shebaits*, the deity is not a necessary party.[217] A worshipper has no unqualified right to sue for a declaration that certain property is *debutter* property of

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210 *Gaurang Sahu v Sudevi Mata*, AIR 1918 Mad 1278 (FB); *Venkataramana v LA Thangappa*, AIR 1972 Mad 119.

211 *Janki Raman v Koshalyanandan*, AIR 1961 Pat 293.

212 *Angurbala v Debobrata*, (1951) 2 SCR 1125 : (1952) 2 Cal 209 : AIR 1951 SC 293.

213 *Raj Kali Kuer v Ram Rattan Pandey*, (1955) 2 SCR 186, 189, 190 : AIR 1955 SC 493.

214 *Ramanathan v Murugappa*, (1906) 29 Mad 283 : 33 IA 139; *Meenakshi v Somasundaram*, (1921) 44 Mad 205 : 59 IC 464 : AIR 1921 Mad 388.

215 *Mitta v Neerunjan*, (1874) 14 Beng LR 166; approved in *Pramatha Nath v Pradyumma Kumar*, (1925) 52 IA 245 : 87 IC 305 : AIR 1925 PC 139; *Mancharam v Pranshankar*, (1882) 6 Bom 298; *Limba v Rama*, (1889) 13 Bom 548; (1896) 20 Bom 495; *Sethuramaswamiar v Meruswamiar*, (1911) 34 Mad 470 : 4 IC 76; *Seshacharyulu v Venkatacharyulu*, AIR 1957 AP 876.

216 *Sri Raman v Sri Gopal*, (1897) 19 All 428; *Padmabati Dassi v Biswanath*, AIR 1976 Cal 344 (*pala* of *shebait* is not property).

217 *Bimal Krishna Ghosh v Jnonendra Krishna Ghosh*, (1937) 2 Cal 105 : 172 IC 161 : AIR 1937 Cal 338.

the idol; if the *shebait* is negligent or alienates the property in breach of trust, either a prospective *shebait* or a member of the family (in case of family endowment) may maintain the suit.[218] However, a suit can be brought by a person who has made large donations to a private Hindu temple against a *pujari*.[219] One of two *shebaits* cannot sue for his half share of the royalty due to the deity under a lease.[220] If the parties are members of a joint family governed by *Mitakshara* law, the senior male member is entitled to manage the property; the other members are not entitled to demand the exercise of the right by rotation.[221]

The founder himself may appoint joint *shebaits*.[222] In *Pramatha Nath v Pradyumma*,[223] the question arose whether one of three brothers, who was entitled under an arrangement between themselves to his annual turn of worship, had the rights to remove the idol to his own house during his turn of worship. The Judicial Committee held that the idol could not be regarded as a mere chattel, and that the will of the idol as to its location must be respected, and the suit was remanded in order that the idol might appear by a disinterested next friend to be appointed by the court.

It may sometimes become necessary to distinguish between a *shebaitship* and bare managership.[224] Distinction has also been drawn at times between a *shebait* and a *pujari*.[225]

(4) *Nomination by will.*—There is a conflict of decisions as to whether a *shebait* can nominate his successor by will. It has been held by the High Court of Calcutta that he cannot, unless there be a usage justifying a nomination by will.[226] On the other hand, it has been held by the High Court of Bombay, that a valid devise may be made of the office of *shebait*, provided the devisee is a person standing in the line of succession, and is not disqualified by personal unfitness.[227] The High Court of Allahabad has taken much the same view as the Calcutta High Court.[228] In view, however, of the law now well-settled, that *shebaitship* is property and not a mere office, *shebaitship* can be the subject matter of a disposition by will.[229] In any case, it is clear that where a person is appointed *shebait* with a power of appointing his successor, he may nominate his successor by an act *inter vivos* or by will. If he dies without

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218 *Sashi Kumari Debi v Dhirendra Kishore Ray*, (1941) 1 Cal 309 : 196 IC 241 : AIR 1941 Cal 248.

219 *Ramchand v Thakur Janki Ballabhji Maharaj*, AIR 1970 SC 532; *Kapoor Chand v Ganesh Dutt*, AIR 1993 SC 1145; *Puran Singh v Ajaib Singh*, AIR 1991 Punj 247 (worshipper can maintain suit). In the same decision, it is also held that such a sale must be for the benefit of the Idol; *Hari Singh v Bishan Lal*, AIR 1992 P&H 11.

220 *Baraboni Coal Concern Ltd v Gokulananda Mohanta Thakur*, (1934) 61 IA 35 : 147 IC 884 : AIR 1934 PC 58.

221 *Thandayaroya Pillai v Shunmugan Pillai*, (1909) 32 Mad 167, 2 IC 314.

222 *Asita Mohan v Nirode Mohan*, (1920) 47 IA 140 : 24 CWN 794 : AIR 1920 PC 129.

223 *Pramatha Nath v Pradyumma*, (1925) 52 IA 245 : 87 IC 305 : AIR 1925 PC 139.

224 *Sri Kishan v Jagannathji*, (1953) 2 All 822 : AIR 1953 All 289.

225 *Dharam Karan v Shahzad Kunwar*, (1953) 2 All 631 : AIR 1953 All 359.

226 *Rajeshwar v Gopeshwar*, (1908) 35 Cal 226. However, see *Sovabati Dassi v Kashi Nath*, AIR 1972 Cal 95.

227 *Mancharam v Pranshankar*, (1882) 6 Bom 298.

228 *Chandranath v Jadabendra*, (1906) 28 All 689; *Goswami Puran Lalji v Ras Bihari Lal*, (1922) 44 All 590 : 67 IC 328 : AIR 1922 All 285.

229 *Banku B Das v Kashi N Das*, AIR 1963 Cal 85. Reference may be made to *Sovabati Dassi v Kashi Nath*, AIR 1972 Cal 95 for an analysis of the case-law on the point. *Nandlal v Kesharlal*, AIR 1975 Raj 226 (gift of *shebaitship* to one in line of succession). Reference may be made to *Shyam Sunder v Moni Mohan*, AIR 1976 SC 977 (construction of a will).

exercising the power, the office reverts to the founder or his heirs.[230] It is not competent for a *shebait* by his act to alter the line of succession to the office of the *shebait*. However, if he makes a fresh grant to the existing endowment, making a new line of *shebaits* an essential condition to the grant, the grant may be rejected on behalf of the deity, but if it is accepted, it must be accepted subject to the condition.[231]

In *Angurbala v Debabrata supra,* the Supreme Court was concerned with the very issue under the Hindu Women's Rights to Property Act, 1937 (18 of 1937) (since repealed) and held that:

> Assuming that the word "property" in Act 18 of 1937 is to be interpreted to mean property in its common and ordinarily accepted sense and is not to be extended to any special or peculiar type of property, succession to shebaitship, even though there is an ingredient of office in it, follows succession to ordinary or secular property. It is the general law of succession that governs succession to shebaitship as well. While the general law has now been changed by reason of Act XVIII (18) of 1937, there is no reason why the law as it stands at present should not be made applicable in the case of devolution of shebaitship.

Taking careful note of the earlier pronouncement, and analysing the incidents of the meaning of 'property', the Court has reaffirmed that *Shebaitship* can be the subject matter of a will.[232]

§ 416A. Devolution of office of *Pujari*.—Though a female is personally disqualified from officiating as a *pujari* for the *shastraically* installed and consecrated idols in the temples, the usage of a female succeeding to a priestly office and getting the same performed through a competent deputy has been well-recognised, and it is not contrary to textual Hindu law nor opposed to public policy. In *Raj Kali Kuer v Ram Rattan Pandye,*[233] the Supreme Court upheld such usage. Subject to the proper and efficient discharge of the duties of the office being safeguarded by appropriate action when necessary, a Hindu female has a right to succeed to the hereditary priestly office of a *pujari* and *panda* held by her husband and to get the duties of the office performed by a substitute, except in cases where usage to the contrary is pleaded and established.

Baridar.—The right of *baridars* of the temple of Shri Vaishno Devi to share offerings is transferable and heritable, and would descend in accordance with the provisions of the Hindu Succession Act, 1956.[234]

§ 417. Transfer of right of management.—(1) *Sale.*—A sale by a *shebait* or *mahant* of his right to manage *debutter* property is void, even though the transfer may be coupled with an obligation to manage the property in conformity with the trust attached thereto.[235] Nor can the right be sold in execution of a

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230 *Annasami v Ramakrishna,* (1901) 24 Mad 219; *Ranjit Singh v Jagannath,* (1886) 12 Cal 375; *Jagannath v Runjit Singh,* (1898) 25 Cal 354; *Radha Nath Mukerji v Shaktipado Mukherji,* (1936) 58 All 1053, 164 IC 595, AIR 1936 All 624.

231 *Nirmal Kumar Banerji v Jyoti Prasad Banerji,* (1941) 2 Cal 128 : 197 IC 763 : AIR 1941 Cal 562.

232 *S. Rathinam v L.S. Mariappan,* AIR 2007 SC 2134 : (2007) 6 SCC 724 (attention is invited to the detailed discussion therein)

233 *Raj Kali Kuer v Ram Rattan Pandye,* (1955) 2 SCR 186 : (1955) ILR Pat 530 : AIR 1955 SC 493. Reference may also be made to *Shambu v Thakur Ladli Radha,* AIR 1985 SC 905.

234 *Badri Nath v Panna,* AIR 1979 SC 1314.

235 *Rajah Vurmah v Ravi Vurmah,* (1876) 1 Mad 235 : 4 IA 76; *Kali Kinkor v Panna,* AIR 1974 SC 1932; *Gnanasambanda v Velu,* (1900) 23 Mad 271 : 27 IA 69; *Kuppa v Dorasami,* (1882) 6 Mad 76; *Gobinda Ramanuj Das Mohanta v Mohanta Ramcharan Ramanuj Das,* (1936) 63 Cal 326; *Biranchi Narayan v Biranchi Narayan,* AIR 1953 Ori 333.

decree against him.[236] Even if a custom be proved, which sanctions the sale of such a right, the courts should refuse to recognise it, as being against public policy, especially where the sale is made to a stranger for the pecuniary benefit of the vendor.

In *Rajah Vurmah v Ravi Vurmah*,[237] which was a case of sale by the *uralers* (managers) of a certain pagoda, of their right to manage the pagoda, the Judicial Committee said:

> Their Lordships are of opinion that no custom which can qualify the general principle of law has been established in this case; and they desire to add that if the custom set up was one to sanction not merely the transfer of a trusteeship but as in this case the sale of a trusteeship for the pecuniary advantage of the trustee, they would be disposed to hold that circumstance alone would justify a decision that the custom was bad in law.

The doctrine of alienation of *shebaitship* on the ground of necessity or benefit to the deity is based upon a misconception of certain pronouncements of the Judicial Committee.[238]

(2) *Gift.*—It has been held in Bombay that it is competent for the *shebait* to renounce his right of management and transfer it without receiving any consideration to a person standing in the line of succession, provided the transferee is not disqualified by personal unfitness.[239] However, a transfer by way of a sale to a divided agnatic relation of the transferor will not be upheld.

In Bombay, the restrictions on alienations of offices are less strictly enforced when the alienee happens to be a member of the family. In the Madras Presidency, greater objection would seem to have prevailed in the matter.[240] The High Court of Andhra Pradesh has expressed agreement with the Bombay view.[241] Where there are several joint *shebaits*, they may renounce their right in favour of any of them, provided the arrangement is for the benefit of the endowment.[242] The transfer of a *shebait* right or of the idol with the endowed property is invalid in law.[243] A gift of the right of management made to a stranger is not valid, unless it is sanctioned by custom.[244] A *bona fide* compromise by the plaintiff in a suit for the office of *shebait*, relinquishing the claim in favour of the person in possession of the office who would be entitled to it after the plaintiff, is valid.[245]

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236 *Durga v Chanchal*, (1881) 4 All 81; *Ganesh v Shankar*, (1886) 10 Bom 395.

237 *Rajah Vurmah v Ravi Vurmah*, (1876) 1 Mad 235 : 4 IA 76, pp 84–85.

238 *Kali Kinkor v Panna*, AIR 1974 SC 1932, p 1936.

239 *Mancharam v Pranshankar*, (1882) 6 Bom 298, p 300; *Hanmappa v Hanmantgauda*, (1947) ILR Bom 789 : AIR 1948 Bom 233.

240 Reference may be made to *Shesbacharyulu v Venkatacharyulu*, AIR 1957 AP 876 where the Madras decisions are reviewed.

241 *Sheshacharyulu v Venkatacharyulu*, AIR 1957 AP 876.

242 *Nirad v Shibadas*, (1909) 36 Cal 975 : 3 IC 76; *Narayana v Ranga*, (1892) 15 Mad 183; *Bameswar Bamdev v Anath Nat*, AIR 1951 Cal 490.

243 *Surendra Narayan Sarbadhikari v Bhola Nath Ray Chaudhuri*, (1944) 1 Cal 139; *Bairagidas v Udayachandra*, AIR 1965 Ori 201 (gift).

244 *Rajaram v Ganesh*, (1899) 23 Bom 131; *Ukoor Doss v Chunder*, (1865) 3 WR 152.

245 As to transfer of right to receive offerings, see § 422. *Srinathi Sabitri Thakurain v Savi*, (1933) 12 Pat 359 : 145 IC 1 : AIR 1933 Pat 306.

Removal of image from one temple to another.—The manager of a public temple has no right to remove the image from the temple, in which it is installed and install it in a new building, especially when the removal is objected to by a majority of the worshippers.[246]

§ 418. Rights of founder.—(1) According to the Hindu law, when the worship of an idol has been founded, the *shebaitship* is held to be vested in the founder and his heirs, unless:

(a) he has disposed it of otherwise; or

(b) there has been some usage or course of dealing which points to a different mode of devolution (§ 416).[247]

This principle applies to private as well as public trusts.[248] The founder may appoint another person to manage the trust on his behalf and when he does so, he can supervise his actions and remove him if he misbehaves. However, where the founder hands over all his rights to another and divests himself of every vestige of interest in the matter, he cannot subsequently sue for being restored to the right of management.[249]

The person providing the original endowment is the founder. However, persons who subsequent to the foundations, furnish additional contributions, do not thereby become founders; their benefaction is regarded as merely an accretion to an existing foundation.[250]

Every donor contributing at the time of foundation of a trust does not necessarily become a founder of the trust. It may be that in a particular case, all the contributors of a trust fund become the founders of the trust itself, but the question when a contributor would become in law a joint founder of the trust, would depend not merely upon the fact of his contribution but also upon the surrounding circumstances and the subsequent conduct of the parties.[251]

(2) The ruling in *Tagore v Tagore*,[252] that all estates of inheritance created by gift or will, so far as they are inconsistent with the general law of inheritance, are void as such, and that by Hindu law no person can succeed thereunder as heir to estates described in terms which English law would designate estates tail, is applicable to an hereditary office and endowment, as well as to other immovable property. A trust deed between brothers, excluding the female heirs from inheritance, is void.[253]

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246 *Hari v Antaji*, (1920) 44 Bom 466: 56 IC 459: AIR 1920 Bom 67.

247 *Gossami Sri Gridharji v Romanlalji*, (1890) 17 Cal 3, 16 IA 137; *Jagandindra Nath Roy v Hemanta Kumar Debi*, (1905) 32 Cal 129, 31 IA 203; *Mohan Lalji v Madhusudan*, (1910) 32 All 461 : 6 IC 77; *Kali Krishna v Makhan Lal*, (1923) 50 Cal 233 : 72 IC 686 : AIR 1923 Cal 160; *Sheo Prasad v Aya Ram*, (1907) 29 All 663; *Anuraji Kuer v Parnanand Pathak*, (1939) ILR Pat 171.

248 *Prakash Chandra Nag v Subodh Chandra Nag*, (1937) 1 Cal 515 : 170 IC 290 : AIR 1937 Cal 67.

249 *Gangaram v Dooboo*, (1936) ILR Nag 111 : AIR 1936 Nag 223.

250 *Appasami v Nagappa*, (1884) 7 Mad 499; *Annasami v Ramadrishna*, (1901) 24 Mad 219, 137, 147 : 17 Cal 3 : 23; *Anarda Chandra v Braja Lal*, (1923) 50 Cal 292, pp 301–02 : 74 IC 793 : AIR 1923 Cal 142; *Narasimhiah v Venkataramanappa*, AIR 1976 Kant 43.

251 *Thenappa Chettiar v Karuppan Chettiar*, AIR 1968 SC 915.

252 *Tagore v Tagore*, (1872) IA Supp 47 : 9 Beng LR 377.

253 *Brijendra Pratap Singh v Prem Lata Singh*, AIR 2005 All 113.

A Hindu, therefore, cannot by gift or will direct that the office of *shebait* shall be held by his sons, grandsons and their male descendants in perpetuity.[254] The right to the office of *shebait* is subject to the rules in §§ 371, 381 and 391.[255]

These rules do not apply to the *dharmakarthaship* of a temple, which is not a species of property like *shebaitship*, and therefore, where the founder provided that the office of trusteeship should be held by his descendants both in the male and the female line, it was held that the provision is valid.[256]

As to the appointment as *shebait* of a person born after the death of the founder, see notes to §371, 'Exceptions to the Rule'.

(3) Where the founder has prescribed a line of succession of the office of *shebait*, but the succession to the office has entirely failed; the right of management reverts to the founder and his heirs.[257] However, the founder is not entitled to alter the line of succession or to interfere in the management, unless he has, by the deed of endowment, reserved the right do so.[258] Nor can a *shebait* do so.[259]

(4) Once a grant is made for religious purposes, it becomes irrevocable.[260] The beneficial ownership cannot under any circumstances revert to the founder or his heirs. If the objects of the endowment are not carried out, the founder or his heirs may bring a suit to have the funds applied to their lawful purposes, but they cannot resume the grant.[261] If the trust fails for want of objects, they may move the court to apply the funds as per the *cy-pres* doctrine, i.e., to other objects as nearly as may be of a similar character.[262]

Where a trust is made *inter vivos* for a charity which fails for illegality, there is no scope for application of the doctrine of *cy-pres* unless a general charitable intent can be gathered from the document.[263]

Where there has been no permanent endowment, but only a temporary arrangement, it is not irrevocable.[264]

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254 *Gananasambanda v Velu*, (1899) 27 IA 69 : 23 Mad 271; *Gopal Chander v Kartick Chunder*, (1902) 29 Cal 716 (PC); *Chundrachoor Deo v Bibhutibhushan Deva*, (1944) 23 Pat 763; *Gokul Chand v Gopi Nath*, AIR 1952 Cal 705 and *Raikishori Dassi v Official Trustee*, AIR 1960 Cal 235, 64 CWN 646.

255 *Manohar Mukerji v Bhupendranath Mukherji*, (1933) 60 Cal 452 : 141 IC 544 : AIR 1932 Cal 791; *Kandarpamohan Goswami v Akshaychandra Basu*, (1934) 61 Cal 106 : 150 IC 179 : AIR 1934 Cal 379; *Ganesh Chunder Dhur v Lal Behary Dhur*, (1936) 63 IA 448 : 38 Bom LR 1250 : 163 IC 347 : AIR 1936 PC 378.

256 *Manathunainatha Desikar v Gopala Chettiyar*, (1943) ILR Mad 858 : AIR 1944 Mad 1.

257 *Jai Bansi v Chattar*, (1870) 5 Beng LR 181; *Hori Dasi v Secretary of State*, (1880) 5 Cal 228; *Sheoratan v Ram Pargash*, (1896) 18 All 227; *Jagannath v Runjit Singh*, (1898) 25 Cal 354; *Gopal Chunder v Kartick Chunder*, (1902) 29 Cal 716; *Sheo Prasad v Aya Ram*, (1907) 29 All 663; *Chaturbhuj Singh v Sarada Charn Guha*, (1932) 11 Pat 701 : 141 IC 157 : AIR 1933 Pat 6; *Radha Nath Mukerji v Shakthipada Mukherji*, (1936) 58 All 1053 : 164 IC 595 : AIR 1936 All 624; *Chandrika Bakhsh Singh v Bhola Singh*, (1938)13 Luck 344 : 168 IC 593 : AIR 1937 Ori 373; *Gulab Dass v Manohar Dass*, (1938) 13 Luck 577 : 171 IC 81 : AIR 1937 Ori 490; *Chundrachoor Deo v Bibhutibhushan Deva*, (1944) 23 Pat 763.

258 *Gourikumari v Ramanimoyi*, (1923) 50 Cal 197 : 70 IC 175 : AIR 1923 Cal 30; *Teertaruppa v Soonderaikijen*, (1851) Mad SDA 57; *Brindaban v Sri Godamaji*, (1937) All 555 : 165 IC 217 : AIR 1937 All 394; *Brindaban v Ram Lakhan*, AIR 1975 All 255; *Narayan v Bhuban Mohini* 38 CWN 15; *Radhika v Amerita*, AIR 1947 Cal 301 : 52 CWN 447.

259 *Brindaban v Ram Lakhan*, AIR 1975 All 255.

260 *Juggut Mohint v Sokheemoney*, (1871) 14 MIA 289, 302.

261 *Ram Narayan v Ramoon*, (1874) 23 WR 76; *Mohesh Chunder v Koylash Chunder*, (1869) 11 WR 443.

262 *Mayor of Lyons v Adv-Gen of Bengal*, (1876) 26 WR 1.

263 *Karuppannan Ambalan v Trumalai Ambalam*, AIR 1962 Mad 500.

264 See sections 92–93, Code of Civil Procedure 1908. *Chaturbhuj Singh v Sarada Charn Guha*, (1932) 11 Pat 701 : 141 IC 157 : AIR 1933 Pat 6.

§ 419. Offerings.—Offerings made to an idol belong to the idol as much as land dedicated to an idol, and not to the officiating priests, unless there be a custom or an express declaration by the founder to the contrary. Such offerings are intended to contribute to the maintenance of the shrine with all its rites, ceremonies and charities, and not to become the personal property of the priest.[265] However, there may be cases in which the offerings, though made to the idols, are received by certain persons and when they are so received independently of any obligation to render services, they are alienable and attachable.[266]

The right to receive offerings from pilgrims resorting to a temple or shrine is inalienable.[267] By custom, there can be hereditary priesthood in a family, and such right may be analogous to real property. The right to *yajman vritti* is right in property, and is heritable and divisible.[268]

§ 420. Removal of *shebaits* and *mahants*—Scheme for management.—The courts have jurisdiction to deal with the managers of public Hindu temples, and if necessary for the good of the religious endowment, to remove them from their position as managers.[269] The court may also remove a *shebait* of a private endowment for misconduct and direct him to render accounts for a certain period in its discretion. Though ordinarily, all the *shebaits* must join in a suit on behalf of the idol when the suit is for the removal of a *shebait* for misconduct, this rule need not be followed. Such a suit by one of the *shebaits* is maintainable.[270] However, a *shebait* whether *de jure* or *de facto*, must be a party to the suit before he can be removed.[271] It is sufficient ground for removing a *shebait* from his office that in the exercise of his duties, he has placed himself in a position, in which the court thinks that he can no longer faithfully discharge the obligations of the office.[272] A member of the interested community may sue in a representative capacity for rendition of accounts of the profits collected by the *shebait*, but is not entitled to call upon the defendant to hand over the funds of the temple except on proof of gross mismanagement or misapplications of the funds.[273] However, a mere mistake on the part of the manager as to his true legal position or a mere laxity of management on his part, not accompanied by any fraud or dishonest misappropriation, does not of necessity, afford a ground for removing him from his post of manager, and entrusting it to new hands. In such a case, the court may appoint a committee to supervise and control him, and, if necessary, frame a

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265 *Manohar v Lakhmiram*, (1888) 12 Bom 247, 265; affirmed in *Chotalal v Manohar*, (1900) 24 Bom 50 : 26 IA 199; *Girijanund v Sailajanund*, (1896) 23 Cal 645; *Shibessourcee v Mothooranath*, (1869) 13 MIA 270, 273 (as to rents).

266 *Nand Kumar Datt v Ganesh Das*, (1936) 58 All 457 : 159 IC 812 : AIR 1936 All 131.

267 *Puncha v Bindeswari*, (1916) 43 Cal 28 : 28 IC 675 : AIR 1916 Cal 269.

268 *Ghisibai v Mongilal*, AIR 1953 MB 7; *Sidhe Nath v Prem*, AIR 1972 All 324.

269 *Chintaman v Dhondo*, (1891) 15 Bom 612; *Ram Parkash Das v Anand Das*, (1916) 43 IA 73 : 43 Cal 707 : 33 IC 583 : AIR 1916 PC 256; *Srinivasa v Evaloppa*, (1922) 49 IA 237 : 253–54, 45 Mad 565, 583–85 : 68 IC 1 : AIR 1922 PC 325 (concocting of accounts); *Bhagwan Dass v Jairam Dass*, AIR 1965 Punj 260.

270 *Nirmal Kumar Banerji v Jyoti Prasad Banerji*, (1941) 2 Cal 128 : 197 IC 763 : AIR 1941 Cal 562.

271 *Doongarsee v Tirbhawan*, (1947) ILR All 263.

272 *Peary Mohan v Monohar*, (1921) 48 IA 258 : 48 Cal 1019 : 62 IC 185 : AIR 1942 Nag 105.

273 *Phuttibai v Shri Dev Mandir*, (1942) ILR Nag 555 : 202 IC 185 : AIR 1942 Nag 105.

scheme for the management of the temple. It does not make any difference that the office is a hereditary office.[274]

As to the framing of a scheme, see sections 92, 93, Code of Civil Procedure, 1908. No scheme can be framed under those sections in the case of a private endowment.[275]

Where a person claiming, as his own, what is really a public charity, appoints a trustee to manage the property, the appointment is invalid.[276]

§ 420A. *Sadabartas*, Tanks, Seats of Learning, Home for disabled or destitutes.—In a decision, the Supreme Court held that a tank can be an object of charity and when a dedication is made in favour of a tank it can be considered as a 'charitable institution'.[277] The court, while referring to the statement of law in Mukherjee's standard work, did not decide whether such an institution could also be considered as a juristic person.

> Though *maths* and temples are the most common forms of Hindu religious institutions, dedication for religious or charitable purposes need not necessarily take one of these forms and the maintenance of *sadabartas*, tanks, seats of learning and homes for the disabled or the destitutes and similar institutions are recognised by and were known to Hindu law, and when maintained as public institutions, they must be taken to have a legal personality as a *math* or the deity in a temple has, and the persons in charge of the management would occupy a position of trust.

A school meant for imparting general education to the public would be a charitable institution, and such an institution will be regarded as possessing a juristic personality and will be capable of holding property.[278]

§ 421. Distinction between public and private endowments: Public and Private temples.—Religious endowments are either public or private. In a public endowment, the dedication is for the use or benefit of the public. The essential distinction between a public and a private endowment is that in the former, the beneficial interest is vested in an uncertain and a fluctuating body of persons, either the public at large or some considerable portion of it, answering a particular description; in a private endowment, the beneficiaries are definite and ascertained individuals or who within a definite time can be definitely ascertained. The fact that the fluctuating and uncertain body of persons is a section of the public following a particular religious faith or is only a sect of persons of a certain religious persuasion, would not make it a private endowment.[279] The essence of a public endowment consists in its being dedicated to the public; and in the absence of any document creating the endowment,

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274 *Annaji v Narayan*, (1897) 21 Bom 556; *Damodar v Bhogilal*, (1898) 22 Bom 493; *Tiruvengadath v Srinivasa*, (1899) 22 Mad 361; *Manohar v Lakhmiram*, (1888) 12 Bom 247 affirmed in *Chotalal v Manohar*, (1900) 24 Bom 50; *Prayag Dass v Tirumala*, (1900) 30 Mad 138, 34 IA 78, in app from 28 Mad 319; *Thackersey v Hurbhum*, (1884) 8 Bom 432; *Sivashankara v Vadagiri*, (1890) 13 Mad 6; *Nelliappa v Punnaivanam*, (1927) 50 Mad 567 : 101 IC 420 : AIR 1927 Mad 614.

275 *Gopal Lal Sett v Purna Chandra Basak*, (1922) 49 IA 100 : 49 Cal 459 : 67 IC 561 : AIR 1922 PC 253.

276 *Vaidyanatha v Swaminatha*, (1924) 51 IA 282 : 47 Mad 884 : 82 IC 804 : AIR 1924 PC 221.

277 *Venkatakrishana Rao v Sub-Collector, Ongole*, AIR 1969 SC 563.

278 *DAV College v SNASH School*, AIR 1972 P&H 245 (FB).

279 *Ram Saroop Dasji v SP Sahi*, AIR 1959 SC 951; *State of Bihar v Charusila Dasi*, AIR 1959 SC 1002; *Deoki Nandan v Murlidhar*, AIR 1957 SC 133; *Pratapsinghji v Dep Charity Commr, Gujarat* AIR 1987 SC 2064; *Nabi Shirazi v Province of Bengal*, (1942) 1 Cal 211, 228.

long user is the material factor from which an inference of dedication may arise. Be sides, use by the public, conduct of the founder and his descendants is also relevant, and if they in fact held out the temple to be a public one, a very strong presumption of dedication would arise.[280] When property is set apart for the worship of a family God, in which the public are not interested, the endowment is a private one.[281] Where the main purpose of the endowment was the *puja* of deity established by the settler in a house, and the surplus income was directed to be utilised for feeding the poor and helping students, it was held that the trust was a private one and that all the trustees must join in its execution.[282] Judicial decisions have laid down certain tests to determine the nature of endowments being public or private in nature. The dedication would be either public or private and total or partial. This would depend upon the recitals as regards control and dedications and stipulations for offerings. Attention is invited to the under mentioned decision.[283]

In *Radhakanta Deb v Commissioner, Hindu Religious Endowments, Orissa*, decided by the Supreme Court, there was a document to prove the nature and origin of the endowment relating to the installation of a family deity in a temple.[284] In such a case, the massive structure of the temple and the facts, that *bhog* was offered in consonance with rules observed by the public, are not determinative factors, and it was held that the endowment was of a private nature. Its use pointed out that the question must depend on various relevant factors and considerations and the facts established in each case. There is no overriding test by general application and the result must depend on balancing of all the facts and circumstances attending the case and the broad general principles laid down in the decisions of the Supreme Court on the subject. Reference was made to a series of such decisions.

In the Madras state, 'it is very unusual for a Hindu to construct a temple outside his dwelling house for private worship,[285] and the general presumption is that temples in the southern state are public temples, unless the contrary is proved'. There is no such presumption in Bengal, or in Bihar.[286]

In Bombay, the question arose in some cases whether a temple in which the idol is worshipped by the *Vaishnava* devotees of the *Vallabha* cult is a private or public temple on the ground of dedication. It has been held that the historical origin of the temple, the rights exercised by the devotees in regard to the worship in the temple, the consciousness of the manager and the consciousness of the devotees themselves, and similar other considerations have to be weighed in deciding the question. If it is shown that the rents and profits of any property are exclusively utilised for the

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280 *Pujari Lakshmana v Subramania*, 29 CWN 112 (PC). However, mere fact that the public was allowed to worship and perform some *pujah* is not conclusive—*Sarjoo v Ayodhya Prasad*, AIR 1979 All 74.

281 Reference may be made to *Bihar State Board v Palat Lal*, AIR 1972 SC 57 (Bihar Hindu Religious Trusts Act, 1950); *Jugalkishore v Lakshmandas*, (1899) 23 Bom 659.

282 *Prasaddas Pal v Jagannath Pal*, (1933) 60 Cal 538, 144 IC 894, AIR 1933 Cal 519. See, however, *State of Bihar v Charusila Dasi*, AIR 1959 SC 1002.

283 *Kuldip Chand v Advocate-General, Govt of UP*, (2003) 5 SCC 46.

284 *Radhakanta Deb v Commissioner, Hindu Religious Endowments, Orissa*, AIR 1981 SC 798; *Mahalinga Iyer v State of Madras*, (1981) 1 SCC 445.

285 *Peesapati v Kanduri*, (1915) MWN 842; *Nallakaruppan v Commr HR and CE*, AIR 1966 Mad 99; *Mahalinga Iyer v State Madras*, (1981) 1 SCC 445.

286 *State of Bihar v Charusila Dasi*, AIR 1959 SC 1002; *Bihar State Board of R Trust v Rameshray Prasad*, AIR 1977 Pat 272.

purpose of public charity for a fairly long period, it may be possible to infer dedication of such property to public charity.[287]

The question of dedication is a mixed question of law and fact. In an endowment in favour of the idol itself, proof of user by the public without interference is cogent evidence that the dedication was in favour of the public. Performance of *pratishta*, which is a ceremony relating to the installation of an idol, may show that there was dedication to the public. The court will consider all the aspects of the matter.[288] When used by the public generally, to the extent to which there is a worshipping public in the locality is established, it would be reasonable to presume that the user by the public was as of right, unless there are circumstances clearly suggesting that the user must have been permissive, or that the authorities in charge of the temple have exercised such arbitrary power of exclusion, that it can only be ascribed to the private character of the institution.[289] As mentioned above, the court will take into consideration all the aspects of the matter and the pertinent circumstances. The grants and gifts made to the temple would be pertinent to the enquiry. The manner in which accounts of the temple have been maintained would also be a pertinent factor.[290] Where, evidence in regard to the foundation of a temple is not clearly available, the court will consider all these aspects, as also certain other facts which are treated as relevant. Is the temple built in such an imposing manner that it may *prima facie* appear to be a public temple? Are the members of the public entitled to take part in the festivals and ceremonies arranged in the temple? Are their offerings accepted as a matter of right? The participation of the members of the public in the *darshan* the temple and in the daily acts of worship or in the celebration of festival occasions may be very important factors to consider in determining the character of the temple.[291]

In making the requisite induction, the court will also address questions such as: Are the temple expenses met from contributions made by the public? Whether the *sevas* and the *utsavas* conducted in the temple are those usually conducted in public temples? Have the management as well as the devotees been treating the temple as a public temple?[292] A temple, which began as a private temple may, in course of time, become a public temple by express or implied dedication.[293] If a temple is proved to have originated as a private temple or its origin is unknown or lost in antiquity, then there must be proof to show that it is being used as a public temple.[294]

Important legal consequences flow from the distinction between private and public endowments, and they have a material bearing on the question as to what remedies are open to the parties in cases where there is maladministration of the endowment

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287 *Ranchhoddas v Mahalaxmi Vahuji*, (1952) 54 Bom LR 982 affirmed in appeal *Goswami Shri Mahalaxmi Vahuji v Ranchhoddas*, AIR 1970 SC 2025; *Sri Ram v Prabhu Dayal* AIR 1972 Raj 180.

288 *Deoki Nandan v Murlidhar*, AIR 1957 SC 133. The question at times becomes somewhat difficult—*Sarat Chandra v Rabindra Nath*, AIR 1957 Cal 11; *Heir of Maharaj Purshottamlalji v Collector of Junagadh*, AIR 1986 SC 2094 (*Vallabh* temple held to be public trust. However, offerings made to *guru* personally held to belong to him).

289 *Narayan v Gopal*, AIR 1960 SC 100.

290 *Ranchhoddas v Mahalaxmi Vahuji*, (1952) 54 Bom LR 982 affirmed in appeal.

291 *Tilkayat Shri Govindlalji v State of Rajasthan*, AIR 1963 SC 1638, 1648; *Sri Ram v Prabhu Dayal*, AIR 1972 Raj 180.

292 *Goswami Shri Mahalaxmi Vahuji v Ranchhoddas*, AIR 1970 SC 2025.

293 *T Mahadeva v Commr HRE*, AIR 1956 Mad 522; *Bala Krishna v Ganesh Prasad*, AIR 1952 Ori 203.

294 *Goswami Shri Mahalaxmi Vahuji v Ranchhoddas*, AIR 1970 SC 2025.

by the manager or trustee. A private endowment lies outside the purview of the Religious Endowments Act of 1863 and the Charitable and Religious Trust Act of 1920 and what is more, section 92 of the Code of Civil Procedure, 1908,cannot be invoked unless the endowments are of public character.

In a decision, the Supreme Court pointed out that the civil courts have jurisdiction to frame a scheme for the management of a temple, even though there is a private and not a public trust.[295] Section 92 of the Code of Civil Procedure, 1908, would not apply to a suit in respect of the temple. Any person, who has made large donations for the maintenance of the temple, has a substantial interest to maintain a suit on behalf of the deity to prevent mismanagement and protect the property of the temple. The *pujari*, who had set up a personal title to the temple properties and had converted the properties to his own use, was removed from management and possession, and appropriate directions were given by the court.

According to English law, the beneficiaries in a private trust, if they are *sui juris* and of one mind, can at their option, modify or put an end to the trust.[296] In *Konwar Doorganath v Ram Chunder*,[297] their Lordships of the Privy Council observed:

> Where the temple is a public temple, the dedication may be such that the family itself could not put an end to it, but in the case of a family idol, the consensus of the whole family might give the estate another direction.

The observation was an *obiter dictum* pure and simple, as the property in dispute was not found to be *debutter* at all. The observation was treated as authoritative in a Calcutta case, where it was held that properties dedicated to a family idol may be converted into secular property by the consensus of the family and that in that particular case, the properties had been so converted with common consent.[298] The correctness of this decision has been doubted in subsequent cases, and it has been said that even if the consent of the family could effect such a diversion, it must be the consent of all members of the family, both males and females, as they are all interested in the worship of the idol.[299]

As to the tests for determining whether a temple is a public or private charity, also see the cases in footnote.[300] Where there was a complete dedication, the temple being built, in a place removed from the residential house of the testator and the public having free access, it was held that the temple was a public temple and the existence of a *samadhi* in memory of religious persons is not inconsistent with this conclusion.[301] In a case where the members of the family treated the temple as a family property, dividing profits (offerings or rents), excluding the public from worship at the time of marriages and other ceremonies in their home, erecting *samadhis* in honour of the dead, it was held that the mere fact the public

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295 *Ramchand v Jankiballabhji*, AIR 1970 SC 532; *Thenappa Chettiar v Keruppan Chettiar*, AIR 1968 SC 915 (foundation for conducting certain *pujas*); *Radhamohan Dev v Nabakishore*, AIR 1979 Ori 181 (scheme—private *debutter*).

296 *Underhill on Trust and Trustees Act*, p 55.

297 *Konwar Doorganath v Ram Chunder*, (1877) 2 Cal 341, 4 IA 52, p 58.

298 *Gobinda Kumar v Debendra Kumar*, (1907) 12 CWN 98.

299 *Gopal v Radha*, (1925) 41 Cal LJ 396, 426 : 88 IC 616 : AIR 1925 Cal 996; *Chandi Charan v Dulal Chandra*, (1927) 54 Cal 30 : 98 IC 684 : AIR 1926 Cal 1083.

300 *Puraviya v Poonachi*, 40 Mad LJ 289 : 62 IC 655; *Parmanand v Nihal Chand*, (1938) 65 IA 252 : 1938 Lah 453 : 40 Bom LR 907 : 175 IC 459 : AIR 1938 PC 195; *Mahant Amar Das v SGP Committee*, AIR 1992 P&H 288.

301 *Premo v Sheo Nath Pandit*, (1933) 8 Luck 266 : 140 IC 896 : AIR 1933 Ori 22.

are not turned away ordinarily from the temple, worship in the temple does not show that it was a public temple.[302] Remission of land revenues in respect of land, on which the temple stands, is one of the decisive factors in determining whether the temple was a public or private one.[303]

The Religious Endowments Act, 1863.—The Religious Endowments Act, 1863 (20 of 1863), does not apply to private endowments.[304] As to the history of the Act and the cases to which it applies, see *Mulla's Code of Civil Procedure*, notes to section 92. See also *Prannath Sarasvati's Tagore Lectures on the Hindu Law of Endowments.*

Though *maths* as a rule are public endowments, a *math* may be a private institution.[305]

§ 422. Right of worship.—Where a temple is established for the worship of members of a particular sect, persons belonging to other sects are not entitled to worship in the temple.[306]

The right of entry and worship in a public temple can be regulated as to time and hours, during which members of the public would be allowed access to the shrine. It is competent to the temple authorities to make and enforce rules to ensure good order and proper worship.[307] Where equal rights to perform *pooja* and partake the offerings were accepted in a document, interpreting the document was within the domain of a Court.[308] As to religious rites and ceremonies, reference may be made to *Ramachandra Keshav v Gavalaksha Ganghadhar Swamy.*[309]

Fees for admission to the sanctuary of a temple.—Rules prohibiting, except upon payment of fixed fees, entry into the inner sanctuary of a temple, are illegal.[310]

§ 423. Limitation.—(1) *Unauthorised alienation by shebait and mahant.*—Where the head of a *math* grants a permanent lease of *math* property or sells it without legal necessity, or where the *math* property is sold in execution of a decree passed against him for a debt not contracted for a legal necessity, the question arises as to the period of limitation for a suit by his successor for possession of the property. Difficulties frequently arose as regards this question, and the Indian Limitation Act, 1908, was amended by Act 1 of 1928, to meet those difficulties. This was done by inserting a new para in section 10 of the Act of 1908, and four new articles in Schedule I to the Act, namely, 134A, 48B, 134B & 134C. (See next page for tables showing relevant articles.) The Act of 1928 came into force on 1 January 1929.

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302 *Bhagwan Din v Gir Harsarwoop*, (1940) 15 Luck 1 : 185 IC 305 : 67 IC 1 : AIR 1940 PC 7. Reference may also be made to *Bihar State Board of Religious Trust v Biseshwar Das*, AIR 1971 SC 2057.

303 *Laxmanrao v Govindrao*, (1950) ILR Nag 1 : AIR 1950 Nag 215.

304 *Protab Chandra v Brojnath*, (1892) 19 Cal 275.

305 *Sathappayyar v Periasami*, (1891) 14 Mad 1.

306 *Sankaralinga v Rajeswara*, (1908) 31 Mad 236, 35 IA 176.

307 *Nar Hari Shastri v Badrinath Temple Committee*, (1952) 1 SCR 849 : AIR 1952 SC 245; *Commr. HRE, Madras v Sri Lakshmindra Thirtha Swamiar*, (1954) 1 SCR 1005, p 1031 : AIR 1954 SC 282.

308 *Parayya Allayya Hittalamani v Parayya Gurulingayya Poojari*, 2007 AIR SCW 6654 : AIR 2008 SC 241 : (2008) 2 MLJ 504 (SC).

309 *Ramachandra Keshav v Gavalaksha Ganghadhar Swamy*, (1973) 75 Bom LR 668.

310 *Asharam v Manager of Dakore Temple Committee*, (1920) 44 Bom 150 : 55 IC 956 : AIR 1920 Bom 153.

Table XXI.1

Table showing relevant Articles relating to religious and charitable endowments under the old Indian Limitation Act 9 of 1908, as amended in 1929 and the new Limitation Act 36 of 1963

Indian Limitation Act 9 of 1908				Limitation Act 36 of 1963			
Article	Description of Suit	Period of Limitation	Time from Which Period Begins to Run	Article	Description of Suit	Period of Limitation	Time from Which Period Begins to Run
134A	Suit to set aside a transfer of immovable property comprised in a Hindu, Mohammedan or Buddhist religious or charitable endowment, made by a manager thereof for a valuable consideration.	12 years.	When the transfer becomes known to the plaintiff.	94	Suit to set aside a transfer of immovable property comprised in a Hindu, Mohammedan or Buddhist religious or charitable endowment, made by a manager thereof for a valuable consideration.	12 years.	When the transfer becomes known to the plaintiff.
48B	Like suit to set aside a sale of movable property.	3 years.	When the sale becomes known to the plaintiff.	95	Like suit to set aside a transfer of movable property.	3 years.	When the transfer becomes known to the plaintiff.

Indian Limitation Act 9 of 1908				Limitation Act 36 of 1963			
Article	Description of Suit	Period of Limitation	Time from Which Period Begins to Run	Article	Description of Suit	Period of Limitation	Time from Which Period Begins to Run
134B	Suit by the manager of a Hindu, Mohammedan or Buddhist religious or charitable endowment to recover possession of immovable property comprised in the endowment which has been transferred by a previous manager for a valuable consideration.	12 years.	The death, resignation or removal of the transferor.	96	Suit by the manager of a Hindu, Muslim, or Buddhist religious or charitable endowment to recover possession of movable or immovable property comprised in the endowment which has been transferred by a previous manager for a valuable consideration.	12 years.	The date of death, resignation of removal of the transferor or the date of appointment of the plaintiff as manager of the endowment, whichever is later.
134C	Like suit to recover possession of movable property which has been sold by a previous manager.	12 years.	The death, resignation or removal of the seller.				

Note: Articles 134A and 48B (New Articles 94 & 95) apply to suit by persons interested in the endowment. Articles 134B and 134C (new Article 96) apply to suits by the successor in office of the transferor or seller.

Article 13B (new Article 96) would apply to suit to set aside a lease of property comprised under a religious endowment, and where more than 12 years have elapsed, the lease is binding on the actual *mahant* and he can only recover the agreed rent.[311] This Article has no application to an execution sale.[312]

The transfer of a portion of a *math* and the properties appertaining thereto by one *mahant* in favour of another, in settlement of *bona fide* dispute between the two *mahants* about the office of the *mahant* of the *math*, is a transfer for a valuable consideration.

Alienation by manager of properties of religious endowment as his own has been expounded in *Srinivasa v Ramaswamy*.[313] Transfer contemplated by Article 134B is an authorised and illegal transfer by previous manager.[314]

'Valuable consideration': meaning of.[315]

Articles 91 & 95—see the under mentioned case.[316]

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311 *Ram Kishore Das Mohanta v Ganga Gobinda Patil*, (1937) 2 Cal 242 : 172 IC 315 : AIR 1937 Cal 305.
312 *Sudarsan v Ram Kirpal*, 77 IA 42.
313 *Srinivasa v Ramaswamy*, (1966) 3 SCR 120.
314 *Veeraraju v Venkama*, (1966) 1 SCR 831.
315 *Jagadguru Gurushiddaswami v Dakhina MD Jain Sabha*, (1954) 1 SCR 235.
316 *Ningawwa v Byrappa*, (1968) 2 SCR 797.

(See corresponding section 10 and corresponding Articles 94, 95 and 96, of the new Limitation Act, 1963.)

When the sale is an execution of a money decree against the *shebait* or manager personally, it is a void sale, and time runs against the purchaser from the date of sale.[317]

(2) *Amendments*.—Originally, section 10, Indian Limitation Act, 1908, prior to its amendment hereinafter mentioned, stood as follows:

> 10. Notwithstanding anything hereinbefore contained, no suit against a person in whom property has become vested in trust for any specific purpose, or against his legal representatives or assigns (not being assigns for valuable consideration), for the purpose of following in his or their hands such property, or the proceeds thereof, or for an account of such property or proceeds, shall be barred by any length of time.

Before the Indian Limitation (Amendment) Act 1 of 1929, neither a *shebait* nor a *mahant* was regarded as a trustee of the *debutter* property. By that Act, section 10 of the Indian Limitation Act, 1908, was amended, and the following paragraph was inserted in it:

> For the purposes of this section any property comprised in a Hindu Mohammedan or Buddhist religious or charitable endowment shall be deemed to be property vested in trust for a specific purpose, and the manager of any such property shall be deemed to be the trustee thereof.

By the same Act, four new articles were inserted in Schedule I to the Act 9 of 1908. The old Indian Limitation Act 9 of 1908 has now been repealed and replaced by the new Limitation Act 36 of 1963.

(3) *Where a shebait or mahant is dispossessed of debutter property during his minority*, he is entitled to sue for possession within 12 years from the date of the dispossession, or within three years from the date on which he attains majority, whichever is the longer period. The fact that he has no proprietary interest in *debutter* property, does not disentitle him to the benefit of the provisions of section 8, Indian Limitation Act, 1908.[318]

Where a *shebait* appointed for life, died, and his heirs took possession of the property, the suit by the heirs of the founder to recover the property was held to be governed by Article 144 (Article 65 of 1963 Limitation Act) and not by Article 120.[319]

(4) *Suit for possession of hereditary office*.—A suit for possession of an hereditary office must be brought within 12 years from the date when the defendant takes possession of the office adversely to the plaintiff or the plaintiff's predecessor in title.[320]

Note that the office of a hereditary priest (*yajman vritti*) is *nibhanda* and is ranked among the hereditary rights of immovable property.[321]

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317 *Subbaiya v Mustapha*, (1923) LR 50 IA 295; *Sudarsan v Ram Kirpal*, 77 IA 42; *Gurunditta v Uttar Dass*, AIR 1965 SC 1966 (date of effective possession where the *mahant* represented the institution *akhara*).

318 Now see corresponding section 8 of the new Limitation Act, 1963. *Jagadindra Nath v Hemanta*, (1905) 32 Cal 129, 31 IA 203.

319 *Chandrika Bakhsh Singh v Bhola Singh*, (1938) 13 Luck 344 : 168 IC 593 : AIR 1937 Ori 373.

320 *Gnanasambanda v Velu*, (1900) 23 Mad 271 : 27 IA 69.

321 *Ghelabhai v Har Gowan*, (1912) 36 Bom 94 : 12 IC 928; *Dhuram Narain v Suraj Narain*, (1940) All 815 : 193 IC 697 : AIR 1941 All 1.

(5) *Suit by reversioner against alienee of widow for recovery of shebaiti right.*— A suit by a reversioner for recovery of a *shebaiti* right from a person to whom a widow, who had succeeded to the right on the death of her husband, had alienated, it is governed by Article 124, Limitation Act and not by Article 141, and the period of limitation begins to run against the reversioner only when the succession opens to him.[322]

Now see Articles 107 and 65 of the new Limitation Act, 1963 (36 of 1963).

322 *Kalipada v Palani Bala*, (1953) 4 SCR 503 : AIR 1953 SC 125.

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